

EXHIBIT A



Analysis of Impacts to the Performance of
McDaniel Plumbing & Heating, Incorporated

On the

Construction of the Sussex Central High School

For the

Indian River School District

Original Report Date: July 30th, 2007

Revised Report Date: February 4, 2008

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SCOPE OF REPORT

Progressive Construction Management, Inc., "PCM", has been retained by RLI Insurance Company to perform a review and analysis on the overall construction schedule and to define the Indian River School District project's critical construction path under generally accepted construction management principles and through analysis generally accepted and implemented in the construction industry. The purpose of this report is to determine what effect, if any, the delays in the Project's critical path had upon the overall construction schedule and upon McDaniel Plumbing and Heating's work at the Indian River School Project.

CRITICAL PATH METHOD

The Critical Path Method, abbreviated CPM, or critical path analysis, is a computer implemented mathematically based algorithm for scheduling a set of project activities. It is a very important tool for effective project management that was developed in the 1950s for managing plant maintenance projects. Today, it is commonly used with all forms of projects, including construction, with interdependent activities.

The essential technique for using CPM is to construct a model of the project that includes the following:

1. A list of all activities required to complete the project (also known as Work breakdown structure),
2. The time (duration) that each activity will take to completion, and
3. The dependencies between the activities.

Using the values inserted into the program by the operator, in this instance, Project dates, CPM will calculate the longest path of planned activities to the completion of the project, and the earliest and latest dates that each activity along the critical path can start and finish without adversely affecting the Project's schedule. This process determines which activities are "critical" to the build (i.e., on the longest path) and which have "total float" (i.e., can be delayed without delaying the project).

In project management, the critical path is the sequence of project's activities which total the longest overall duration. This determines the completion date of the project. Any delay of an activity along the critical path directly impacts the planned project completion date (i.e. there is 'no float' on the critical path). A project can have several, parallel, near critical paths. An additional parallel path through the network

with the total durations shorter than the critical path is called a sub-critical or non-critical path.

These results allow construction managers to prioritize activities for the effective management of project completion, and to shorten the planned critical path of a project by pruning critical path activities, by "fast tracking" (i.e., performing more activities in parallel), and/or by "crashing the critical path" (i.e., shortening the durations of critical path activities by adding resources).

Since project schedules change on a regular basis due to weather delays, change orders, supply shortages, labor issues and a myriad of other unforeseen problems that may arise, CPM allows continuous monitoring of the schedule, allows the project manager to track the critical activities, and alerts the project manager to the possibility that non-critical activities may be delayed beyond their total float, thus creating a new critical path and delaying project completion.

Currently, there are several software solutions available in industry that use the CPM method of scheduling, for this report, PCM utilized "Primavera Systems, Inc." software and Timelines for Windows, which are commonly and regularly used in construction projects of this size and magnitude. A schedule generated using critical path techniques often is not realized precisely, as estimations are used to calculate times: if one mistake is made, the results of the analysis may change. This could cause an upset in the implementation of a project if the estimates are blindly believed, and if changes are not addressed promptly. However, the structure of critical path analysis is such that the variance from the original schedule caused by any change can be measured, and its impact either ameliorated or adjusted for. Indeed, an important element of project postmortem analysis is the As Built Critical Path (ABCP), which analyzes the specific causes and impacts of changes between the planned schedule and eventual schedule as actually implemented.

MATERIALS REVIEWED AND RELIED UPON

In preparing this report, I have reviewed documents produced through discovery by the parties hereto on several occasions throughout the preparation of this report. The documents that I have relied upon in reaching my conclusions are attached as Exhibits to my report, an appendix of which accompanies the Exhibits. I have also relied upon the electronic information which accompanied the email transmittal of this report to Harry R. Blackburn & Associates, P.C. on this date.

HISTORICAL DATA, PROJECT TIMELINE AND SCHEDULE UPDATES FROM MAY 10, 2002 TO TERMINATION OF McDANIEL IN MID-OCTOBER 2004

On May 10th, 2002 the Indian River School District, in an internal memorandum, noted their retention of EDiS Company to provide construction management services for the upcoming construction of the Sussex Central High School project. The contract, dated January 7th, 2002, totaling \$1,192,000, incorporated 32 months of performance duration to supervise design and construction phases for the 187,225 SF facility. The memorandum notes that EDiS Company had been working without compensation since January and that the payment structure would start from that date. **Exhibits 1 and 2.**

Albeit the fact that the EDiS contract envisioned performance of pre construction services, the specific period for construction, as referenced in their contract, was from a commencement on July 15th 2002 to a substantial completion on May 21st, 2004, and a final on September 2nd, 2004, or a gross duration of twenty six and a half months for overall construction.

Subsequent to the issuance of EDiS's contract, on the 17th of July 2002 EDiS transmitted the following notices to proceed:

NDK Gen Contr, Inc.	Concrete	\$898,000
A P Croll & Son	Site Work	\$2,169,500
Murphy Steel	Struct Stl & Misc Metals	\$1,445,000
(Exhibit 3)		

On August 15th, 2002 the Indian River School District received prime bid for the mechanical, plumbing and automatic temperature control construction scope for the new Central High School in Millsboro, Delaware, Sussex County. **Exhibit 4.**

The bids were compiled by the District's Construction Manager, EDiS Company, and their Architect Becker Morgan Group, Inc. and submitted on August 22nd, 2002. The following is the abstract of the Mechanical & Plumbing Bid:

Bidders	Base	Alt 1	Alt 2	Alt 3
McDaniel P&H	4,289,000	33,000	4,500	9,000
Delcard Associates	4,516,000	72,000	10,000	23,000
J D Griffith	4,826,000	79,500	6,500	17,000
Joseph Zimmer	4,849,000	93,000	13,000	39,000
(Exhibit 5)				

McDaniel Plumbing & Heating of New Castle, Delaware bid, and was apparent low bidder for, the contract SC-B-14 "Mechanical, Plumbing, Automatic Temperature

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Control”, and on the 28th of August 2002, was notified by the School District that their bid of \$4,335,500 (\$4,289,000 Base, + \$33,000 for Alt 1 Aux Gym + \$4,500 for Alt # 2 Storage Area + \$9,000 for Alt #3 Classrooms) was accepted and that McDaniel was authorized to proceed with construction.

Other successful select work scope bidders, receiving notice to proceed on the 28th of August, were:

CTA	Roofing
Bear Industries	Fire Protection
John W Tieder	Electrical
Enterprise Masonry	Masonry
(Exhibit 6)	

As referenced above, on the 28th of August 2002 Tieder was afforded a notice to proceed on the noted electrical scope, whereas NDK was directed to proceed on a second contract, for Drywall construction, in the amount of \$1,355,000 and Enterprise received their notice to proceed on the masonry and cast stone scope in the contract amount of \$3,456,000. **Exhibit 7.**

As part of the contract documents the owner supplied bidders with the planned performance schedule, with performance dates, presented in a critical path method format, representing a July 17th, 2002 commencement and an anticipated completion date of May 31st, 2004. **Exhibit 8.**

It is important to note that this report relies upon the schedule incorporated in the contract documents, and though we reflect upon dates and sequences afforded in numerous subsequent schedule updates we believe that McDaniel has the right to expect and rely upon the performance, sequencing and durations incorporated in the aforementioned schedule.

To the extent that the schedule is delayed, an extension would be expected, and to the extent that acceleration or re sequencing is directed to ameliorate the performance of other contractors, McDaniel would attempt to make all effort to mitigate said delay.

The following plate is a recapitulation of that initial schedule. In it’s simplicity you will note that mechanical and plumbing construction commence upon completion of the footers and foundation walls, concurrent with the slab on grade start.

Approximately one month and two weeks later steel erection commences, once again completing in approximately one month, two weeks. **Exhibit 9.**

A month prior to the completion of steel erection masonry erection above grade, commences three months subsequent to the start of mechanical and plumbing construction. **Exhibit 10.**

Upon completion of the steel erection roofing commences and runs for less than two months, completing one month subsequent to the completion of roofing. **Exhibit 11.**

From experience the schedule required McDaniel to commence under slab utility work one and a half months into its two and a half month duration.

Above slab M/P risers started concurrent with the slab pours and were the initial above slab rough activity. This above slab mechanical rough sequence was tied off the start of slabs on grade (Note slab on deck was missing from the schedule). **Exhibit 12.**

Between January 15th, 2003 and April 9th, 2003, fully concurrent with the slab on grade construction, McDaniel experienced a period of time where above slab masonry would not progress on the floors, affording McDaniel a clear opportunity to begin the installation of remaining risers, plumbing and piping overhead laterals, and homerun/branch duct runs without obstruction from walls. **Exhibit 13.**

In its award winning bid McDaniel planned on this aforementioned three month period of time to stay ahead of the mason and install overhead lateral rough without obstructions. And assuming the mason was following the same sequence established in the September 2002 update McDaniel would have had a minimum of near three months of unfettered performance at the onset of every building. **Exhibit 14.**

This type of critical path scheduling, albeit simple by nature, should have afforded McDaniel the timing and sequences necessary to accomplish this project incorporating planned efficiencies.

As noted earlier, roof construction followed the steel erection sequence and was represented by an overall project duration of less than two months per the 2003 schedule. With the masonry walls to be completed by the 4th of May 2003, and the roof to be in place by the 1st of July 2003 and, finally, curtain walls and windows schedule to start on the 4th of June 2003, McDaniel had the right to expect a weather-tight building to perform its work starting in June of 2003, a full year before the planned project completion. **Exhibit 15.**

The start of metal studs and drywall, five months after the start of slabs, again, like above slab masonry, afforded McDaniel five months of performance, subsequent to the start of slabs on grade to perform without the impact of concurrent, or prior stud erection. This time frame is calculated through use of dates set forth in the updated project schedule.

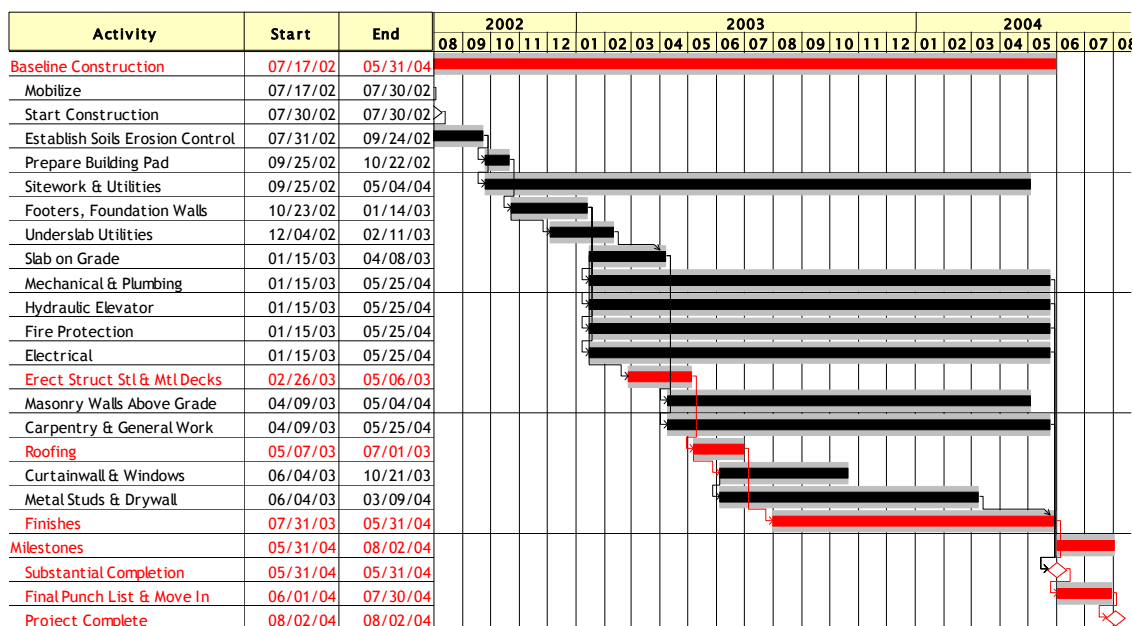
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We note these sequences that comprise the schedule, as they pertain to plumbing and mechanical construction, in that each ultimately was impacted either as a result of delays, or constructive compression/acceleration attempted to ameliorate mounting delays.

As noted in this narrative though delays amounted to substantive proportion in comparison to the project original performance duration, yet at no time was an extension afforded, by change, to the contract. Monthly schedule revisions/updates will be issued that compress sequences resulting in the aforementioned acceleration/compression, in an attempt to mitigate the impact of delays, but largely to no avail. Simultaneously EDiS continues to reassure the district of a timely or near timely completion despite what we will demonstrate were literally months of critical impact to the baseline schedule. **Exhibit 16.**

In summation, given the size of the building the schedule was aggressive, but if the sequencing and predecessor performance maintain the construction milestones, the date was readily achievable.



The first construction progress meeting references that the project sequence for construction will be A, C, D, E, F, B, whereas in subsequent meeting that sequence will change (i.e. 9/17/02 project schedule sequence of A, C, F, D, E, B). **Exhibit 17.**

On September 17th, 2002 the second project meeting is held, approximately two months into the twenty two months actual performance duration (7/15/02 - 5/21/04) wherein it was noted that the initial site activity "Stripping of Topsoil" will start the following day, by Croll. Other Croll activities in progress were:

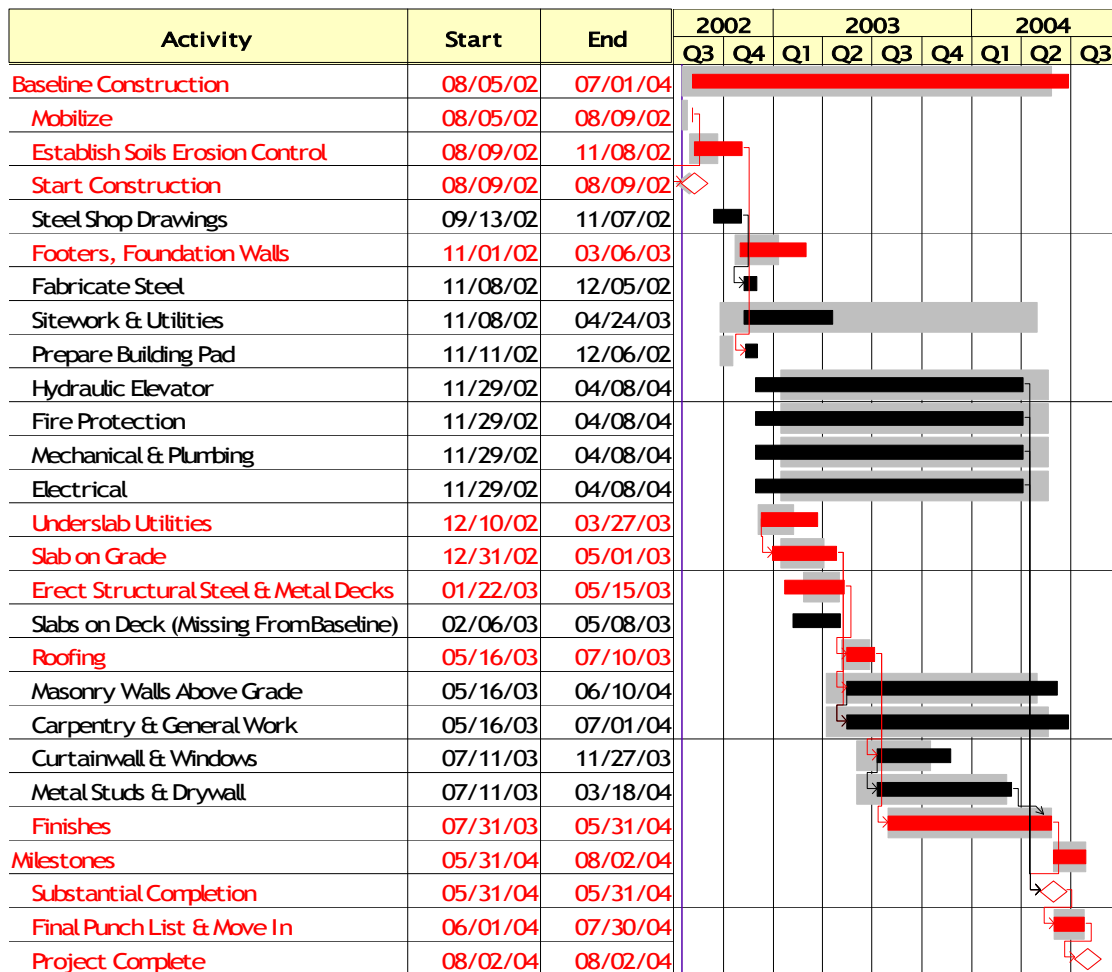
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- Cleaning of Route 318 ditch (Will complete as of Sept 17th, 2002)
- Stripping of topsoil (Scheduled to commence Sept 18th with Proof Rolling as of the 27th)
- Excavation of Ponds & Building Pad Prep (Will commence Sept 27th)
- Force Main Installation (To Commence Oct 22nd)
- Pre-Construction Meeting for Concrete Footers & Piers (Scheduled for November 6th)
(Exhibit 18)

Among the notes is one regarding the concrete commencement pre construction meeting on November 6th, whereas the schedule attached to the meeting minutes represents commencement of footers on November 1st, five days prior. **Exhibit 19.**

The meeting continues by noting that excavation of ponds and preparation of the building pads will commence as of the 26th of September, and were expected to complete by the 30th of October, but water has had adverse impact on progress.

The following schedule was attached to the meeting minutes and we have referenced the revised performance dates to the baseline contractually mandated performance referenced in gray. Areas where there are no gray baseline bars (i.e. Slabs on Deck), are areas of work scope not incorporated in the contractual baseline schedule document.



Other possible issues of schedule impact, noted, are the approval of change orders including, but not limited to

- Additional Fill & Grading Around the Building (Will not be processed until November 18th, 2002)
 - Additional Sewer Manhole (Waiting on signature)
 - Lower Sewer Mains on Site (Waiting on signature)
 - Add Entrance Pipes (Change transmitted to Croll)
 - Dig Test Pits (Change transmitted to Croll)
 - Delete Turn Down Slabs at Exterior of Building (Under Review)
- (Exhibit 20)

The defined baseline contract schedule would have required planned completion of the erosion controls as of September 24th, 2002, this September 17th, 2002 schedule extends the same sequence to November 8th, 2002:

Activity	Start	End	2002						
			08/04	08/11	08/18	08/25	09/01	09/08	09/15
Baseline Construction	08/05/02	07/01/04							
Mobilize	08/05/02	08/09/02							
Start Construction	08/09/02	08/09/02							
Establish Soils Erosion Control	08/09/02	11/08/02							
Install Silt Fence	08/09/02	08/09/02							
Stabilized Construction Entrance	08/26/02	09/05/02							
Clean Out Ditch	09/06/02	09/18/02							
Strip Topsoil-Ponds-Building	09/18/02	09/26/02							
Excavate Ponds & Prep Building	09/27/02	10/31/02							
Install Pond Structures	11/01/02	11/07/02							
Stabilize Ponds	11/08/02	11/08/02							
Steel Shop Drawings	09/13/02	11/07/02							

It is evident from these plates that, as of September 17th initial, critical activities of construction will be significantly waylaid from their baseline performance dates:

Activity	Start	End	2002					2003	
			08	09	10	11	12	01	02
Start Construction	08/09/02	08/09/02							
Establish Soils Erosion Control	08/09/02	11/08/02							
Install Silt Fence	08/09/02	08/09/02							
Stabilized Construction Entrance	08/26/02	09/05/02							
Clean Out Ditch	09/06/02	09/18/02							
Strip Topsoil-Ponds-Building	09/18/02	09/26/02							
Excavate Ponds & Prep Building	09/27/02	10/31/02							
Install Pond Structures	11/01/02	11/07/02							
Stabilize Ponds	11/08/02	11/08/02							
Steel Shop Drawings	09/13/02	11/07/02							
Footers, Foundation Walls	11/01/02	03/06/03							
Concrete A Administration	11/01/02	12/09/02							
Concrete C Classrooms	11/29/02	12/19/02							
Concrete F Gym/Cafe/Mech Room	12/02/02	02/13/03							
Concrete D Classrooms	12/13/02	01/02/03							
Concrete E Classrooms	12/27/02	01/16/03							
Concrete - B Auditorium- AG	01/31/03	03/06/03							

One of the initial areas that EDiS explores, in what appears to be an attempt to ameliorate early schedule logic delays, from erosion control and foundation performance, is MEP scheduling the performance of underground near fully concurrent with concrete foundations, slabs on grade and structural steel rather than in a sequential logic, with overlaps, as originally intended.

Specifically, the baseline logic did have concurrent performance between foundations and under slab utilities, but subsequent steel and slab performance either had minimal or no concurrency.

This new schedule has slab on grade concurrent with three of the under slab three and a half months of performance, whereas the baseline had an overlap of one month, there was not structural steel overlap in the baseline whatsoever and now they are two months concurrent. Additionally deck pours have been added to the schedule, which further impede mechanical and plumbing riser placement, this time concurrent with one and a half months of the under slab overall performance duration. **Exhibit 21.**

The following plate demonstrates the initial schedule (Gray) and the revised schedule (Colors) to demonstrate the greater concurrency being implemented arising from delays to foundation and attempts to start slabs and steel earlier.

Activity	Start	End	2002	2003					
			12	01	02	03	04	05	06
Footers, Foundation Walls	11/01/02	03/06/03							
Underslab Utilities	12/10/02	03/27/03							
Slab on Grade	12/31/02	05/01/03							
Erect Structural Steel & Metal Decks	01/22/03	05/15/03							
Slabs on Deck (Missing From Baseline)	02/06/03	05/08/03							
Roofing	05/16/03	07/10/03							

The minutes of the third project progress meeting, dated October 1st, 2002, note that topsoil stripping was complete on the 24th of September 2002 and proof rolling and filling of the building pad started September 25th, the following day likely using the material generated by the retention pond excavation starting the same date. **Exhibit 22.** Croll notes the building pad and pond work will take four to six weeks, or a possible completion in the first week of November. **Exhibit 23.**

During the same meeting it was noted that NDK planned commencement of footers excavation on the second week of November. **Exhibit 24.**

Given that the baseline schedule referenced the completion of the pad on October 22nd, and the commencement of foundations on the 23rd of October it would appear that these critical milestones, and consequently the contract are two weeks behind schedule.

The noted completion of the building pad, and commencement of foundation layout, is improved by a week (October 30th, 2002) in the fourth progress meeting dated October 15th, 2002. **Exhibit 25.**

Six weeks after their notice to proceed, on October 16th, 2002, McDaniel receives a contract for signature. **Exhibit 26**

On October 24th, 2002 McDaniel received on set of "marked up steel drawings" from EDiS requesting that penetrations be reviewed and confirmed. **Exhibit 27.**

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On the 29th of October 2002 EDiS writes to McDaniel noting that the will not forward pump and expansion tank submittals from manufacturers not referenced in the design documents. **Exhibit 28.**

The October 29th, 2002 progress (**Exhibit 29**) and November 7th “Executive Session Meeting Minutes” (**Exhibit 30**) notes impact to site work due to weather. As a consequence, as of the November 12th meeting (**Exhibit 30a**), the building pad is not complete, the foundations have not commenced and layout is not likely until the 18th of November, a net delay of twenty seven calendar days. Despite this significant critical delay so early in the project, the attached project schedule of November 10th, 2002 (**Exhibit 31**) affords no extension to the performance duration thereby compressing performance time for subsequent contractors.

The project meeting minutes, number seven, dated November 26th, 2003, more than three months beyond the July 17th notice to proceed, represents a project with

- partial soil erosion control,
- partial building pads,
- no site water controls (Storm System, Ditch Clean Out),
- no steel shop drawings for Area A.

(**Exhibit 32**)

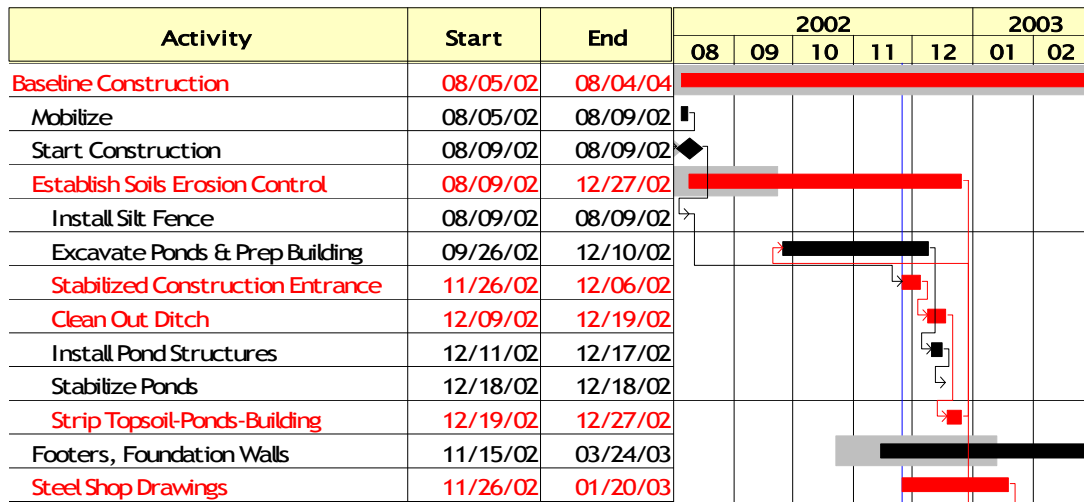
The following, partially impacted activities result in an impacted (Structural Steel Shop Drawings Base 9/13/02 - 11/17/02, Versus Impacted 11/26/02 - 1/20/03) project substantial completion date of July 2nd, 2004, a net delay of thirty two (32) calendar days, in three months.

Activity	Start	End	2002		2003				2004		
			Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3
Baseline Construction	08/05/02	08/04/04									
Establish Soils Erosion Control	08/09/02	12/27/02									
Stabilized Construction Entrance	11/26/02	12/06/02									
Clean Out Ditch	12/09/02	12/19/02									
Strip Topsoil-Ponds-Building	12/19/02	12/27/02									
Steel Shop Drawings	11/26/02	01/20/03									
Fabricate Steel	01/21/03	02/17/03									
Erect Structural Steel & Metal Decks	04/04/03	06/18/03									
Roofing	06/19/03	08/13/03									
Finishes	09/03/03	07/02/04									
Milestones	07/02/04	09/03/04									
Substantial Completion	07/02/04	07/02/04									
Final Punch List & Move In	07/05/04	09/02/04									
Project Complete	09/03/04	09/03/04									

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At this juncture the building pads (prepared areas for excavation) have yet to be complete, but a portion have been afforded to allow foundation excavation/construction, per NDK, during the November 26th, 2002 meeting, to start on November 21st, 2002, twenty nine days behind schedule, but three days less impact than the delay arising from the steel shop drawings.



As noted in an earlier comparison, despite this rather sizable delay, now in the excavation, foundation and steel shop sequences, the EDiS schedule update, for December 2nd, 2002, does not represent any impact. **Exhibit 33.**

This failure to compute and outline impacts and corresponding critical extensions, arises partly from the fact that the building pad has not completed as of November 26th, yet the EDiS scheduling document reflects the activity complete on October 31st, 2002. Clearly, had the schedule been properly updated, and statused with the proper progress the impact would have been generated.

As for the concrete foundation excavation in Area A, originally scheduled to commence on October 23rd, 2002, the December 10th project meeting minutes (part 8.3.2 of the report) (**Exhibit 34**) represent that the work commenced on the 21st of November and is scheduled to complete on the 2nd of December in the A Administration Area, whereas in report section 8.2.5 (Schedule Update) it is reported that the same effort began on December 2nd and will complete on the 18th of December. This flawed schedule reporting gives rise to the concern of whether impacts can be effectively and accurately managed by EDiS.

The January 2003 status report (**Exhibit 35**) from EDiS to IRSD noted that the project was in fact five weeks behind schedule which they attribute to weather delays resulting in a revised contract substantial completion date of July 22nd 2004, considerably more than five weeks beyond the May 31st contractual date. Despite this

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representation the Buildings and Grounds Progress Meeting, dated January 6th, 2003 (**Exhibit 36**) notes:

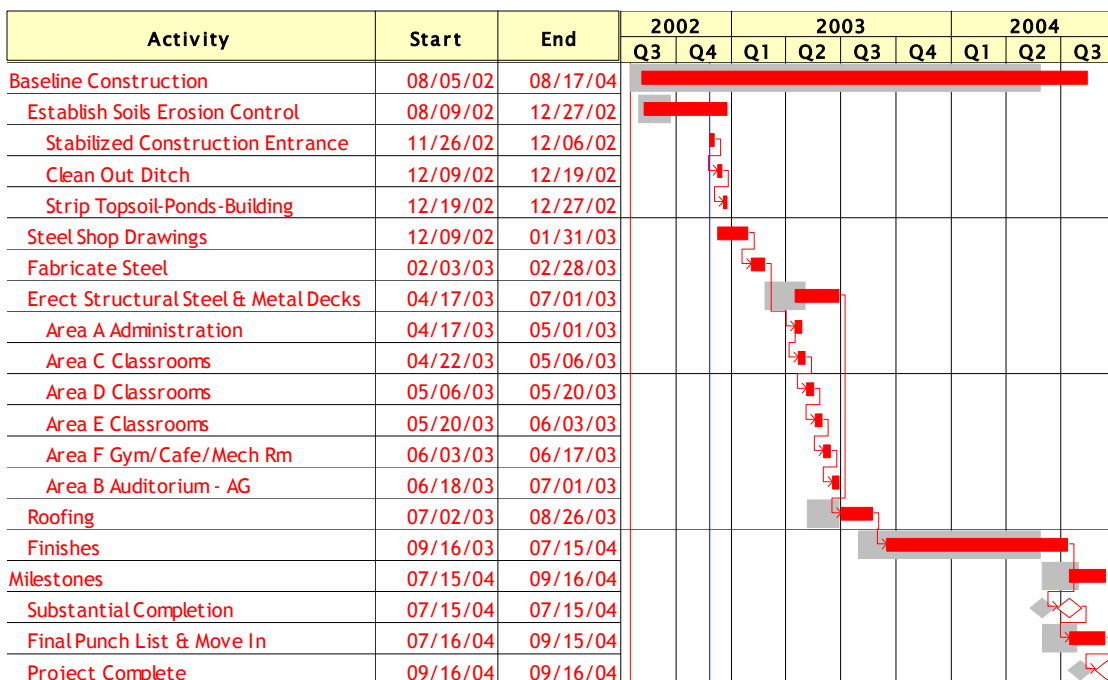
Construction is running approximately two weeks behind. They have already started laying the foundation and the blocks. Steel construction should begin as early as next week. Steel contractors are optimistic that they can make up some of the time.

This reporting is inaccurate in that the January 7th, 2003 EDiS project meeting number 10 (**Exhibit 37**) unequivocally reports that steel will not start until the end February 2003.

On January 3rd, 2003 McDaniel mobilized the site, received pipe sleeving, and began placement to afford penetrations through concrete footers and block walls. **Exhibit 38**.

Despite a baseline completion of steel shop drawings for November 7th, 2002, the impacted overall contract completion date, generated by the actual submission of initial steel shop drawings on December 9th 2002 (MoM 8.3.3), has now been pushed to July 15th, 2003 and no part of the steel engineering process was impacted by weather, contrary to EDiS continued reliance on this purported impact. **Exhibit 39**.

The submission of steel drawings for Areas C and E, were complete as of the January 10th, 2003 project meeting. **Exhibit 40**. Given the outstanding steel shop drawing submissions (Areas F and B) these critical drawings need to be approved in a manner as not to further waylay the contract critical path through the critical steel fabrication and erection sequence.

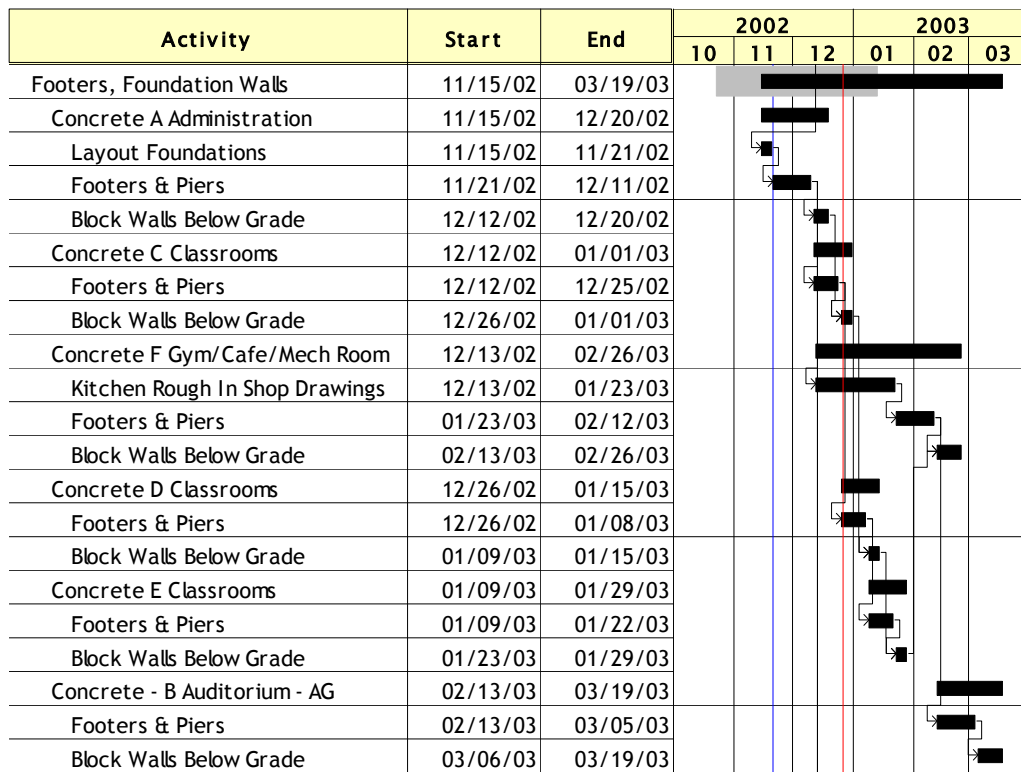


The January 7th, 2003 project meeting number ten notes that

- Croll continues excavation of ponds as weather allows
 - Croll started installing access roads, but will focus on this in January 2003 (*Not that is is now nearing six months on site and the access roads are just commencing*).
 - NDK excavation for footers and piers in Area A is ongoing
 - EDiS is requiring NDK to correct piers out of tolerance
 - Steel erection should start at the end of February 2003
 - Enterprise started the below grade foundations in A o the 19th of December
- (See **Exhibit 37**)

Given that Footers, Foundation Walls, per the baseline schedule, were to have started on the 23rd of October and completed on the 14th of January, for all areas, the continued effort as of January 7th, for the A area alone, demonstrates how far NDK is behind the planned pace.

Incorporating specific sequences, generated post bid (September 18th, 2002 Schedule Update), would suggest the following foundation planned dates:



The March 19th, 2003 completion of the foundation sequence would equate to a seventy one day delay to foundation construction, but as noted earlier the steel shop drawings are currently generating delays that result in their driving the critical path.

As noted earlier, other issues of impact/interest, from the January 7th project meeting are:

- AP Croll started installing access roads (Access delay to date)
- Excavation of the ponds continues
- The force main installation is 25% complete
- **Installation of footers in Area A is 75% complete**
- **Foundation block walls began on December 19th, 2002**
- Excavation of footers in Area C is delayed, due to weather, until early January
- Steel shop drawings for "E" & "F" are outstanding from Murphy
- Installation of U/G Utilities in Area C will begin January 13th
- Approval of Area C steel drawings on the 15th of January

As of the 13th of January 2003 McDaniel's reporting notes that they are installing storm and sanitary underground in Area C, and that an office trailer has been delivered to the site. **Exhibit 41.**

On January 15th, 2003 EDiS forwards Murphy Steel the approved steel drawings for Area C. **Exhibit 42.**

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Also on the 15th of January 203 the plumbing inspector passed the Area C Sanitary Underground mains. **Exhibit 43.** The following day, January 16th, McDaniel began installation of storm and sanitary mains in Area D. Despite evident delays by other contractors that have are already impacted the performance period and wasted valuable installation time due to lacking progress, McDaniel continues to support the project progress in an businesslike manner. ????????

EDiS notes on the 17th of January 2003 that they have received McDaniel's activity schedule for areas A and C. EDiS notes that they require completion of mechanical systems as of August 1st, 2003 to assist in achieving conditioned space, and consequently completion of the project. **Exhibit 44.**

This is of concern in that McDaniel's contract schedule did not require phased completion of any portion of the scope. By contract McDaniel's had until May 25th of 2004 to complete. CITE The contract does not allow for alternate mandated milestones. For EDiS to suggest an operational HVAC system within six months of this notice, and nine months before the schedule completion is unreasonable, and more so given the loss of six weeks as of this date due to the impacts of others.

EDiS' request, for this interim conditioned air milestone, further compresses planned HVAC construction sequences beyond the seventy one day foundation/steel impact reported earlier.

As of January 21st, 2003 McDaniel is removing excess soil from the C Area footprint, installing stone bedding, placing piping backfilling C underground and beginning excavation of trenches in Area A for placement of underground sanitary and storm. **Exhibit 45.**

This is an important reference in that the failure of predecessor contractors to afford timely and properly prepared sub grade work areas is resulting in extensive additional work by McDaniel, to prepare the site, which will ultimately translate into labor overruns and early exhaustion of resources. Additionally, per McDaniel, the failure to afford a storm drainage and erosion control, complete, system, has left the project in a near quagmire state. Both conditions result in labor overruns in the under slab rough scope.

Also of importance, on this January 21st, 2003 date, is the baseline, contract schedule milestone for completion of foundations, one week prior on the 14th of January. **Exhibit 46.** Yet as of this date NDK continues to work areas A, D and C, and yet to start E, F and B. Without the planned footing progress precious McDaniel in slab performance time is being lost and the work, performed later in the project will require ever greater, and correspondingly less efficient, crewing if the end dates and newly introduced interim milestones are to be considered.

Even the initial schedule revision (Not agreed to by MP&H) of September 18th, 2002 noted the completion of A, C, D and E as of the 16th of January with F well underway.

Clearly the failure of NDK to complete the foundations is critically impacting the contract by a minimum of that time required, beyond January 14th, 2003 to complete the foundations. The January 2003 EDiS schedule update attached to the project meeting (**Exhibit 47**) does not outline foundation dates for "F" or "B" buildings, but does note completion of concrete in E Classroom on April 29th, 2003, a delay of as much as three months before estimating the additional impact for F and B foundations. Noting EDiS breakout of foundations in recent schedules suggests that F and B could require yet another three months beyond the three month delayed E completion. If this is near accurate the completion of foundation could well continue through July of 2003 (4/29/03 + F&B durations of three additional months), an overall six months delay to the foundation construction. **Exhibit 48**.

The concern with initial delays to the project, and the impact of adverse weather, as winter approaches, is clearly delineated in the January 22nd 2003 McDaniel job report's reference to "Freeze Problems in Underground" and unequivocally states that soil is being placed on incomplete installations to avert frost. **Exhibit 49**. The January 27th McDaniel report notes that the project is shut down due to the cold and windy weather. **Exhibit 50**.

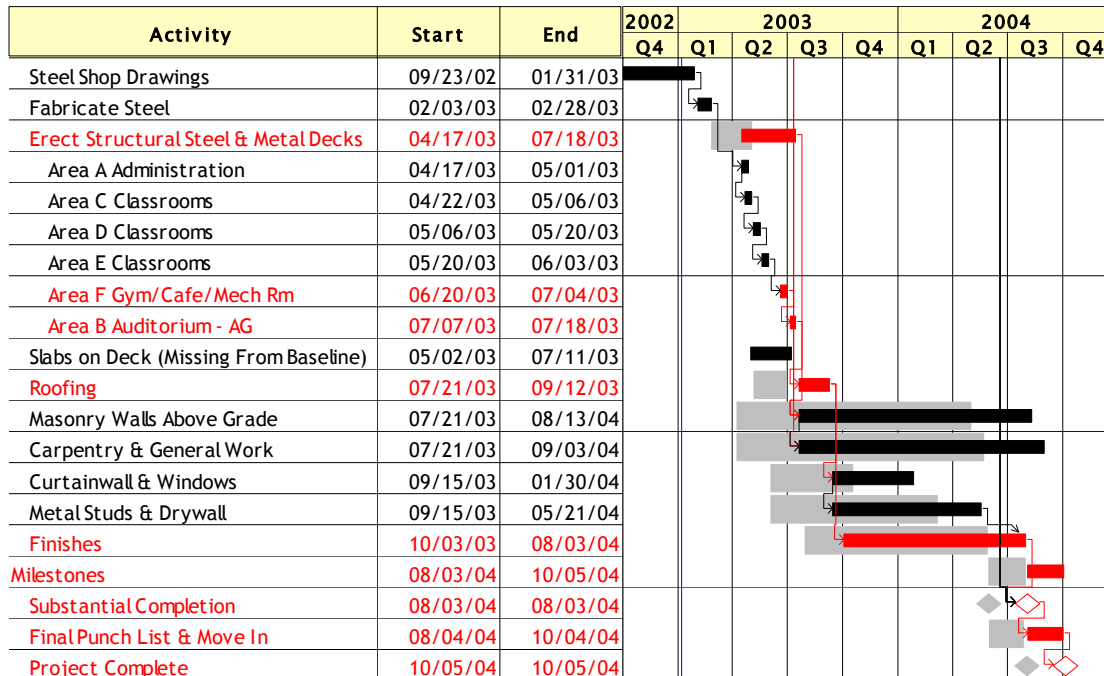
The impact of placing and removing cover due to the offset placement of foundations is an extra impact to the contract and an incurred cost to McDaniel to bury and uncover installations daily to combat cold and the lack of complete foundations. Had the foundation progressed as planned none of the conditions (poor sub grade, water intrusion, cold and frost) would have been a consideration in that the work would have been completed well before this condition.

The January 21st, 2003 project meeting note (**Exhibit 51**) that shop drawing for buildings F & B steel were outstanding and that D & E drawings had been turned over to BIA and erection was planned for March, 2003. Oddly the attached construction schedule update notes that structural steel erection will start in A on February 13th a clear conflict in reporting.

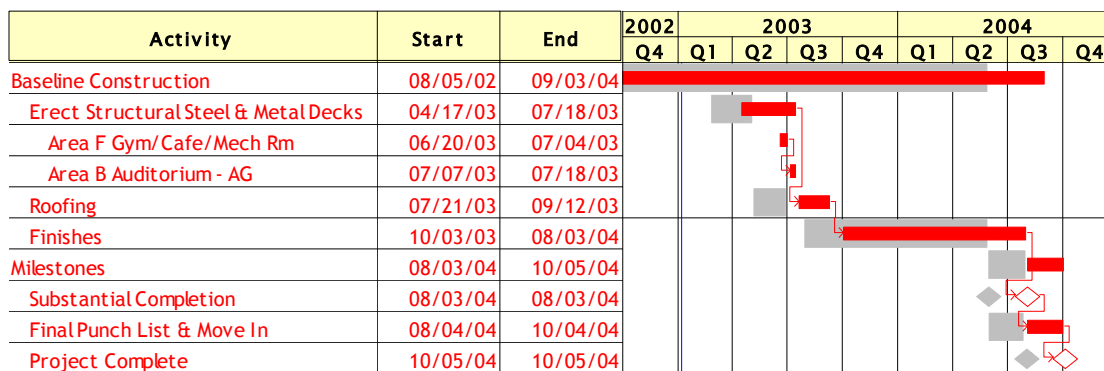
On January 24th, 2003 Baker Ingram & Associates transmits final Area E drawings as well as miscellaneous steel drawings for Area A. (**Exhibit 52**). On the 27th and 29th of January structural steel drawings for Areas D, and E are returned by EDiS to Murphy. **Exhibit 53**.

The resultant impact of this issue is noted below using the original contract baseline logic and the assumption that steel will start in A on or April 17th, 2003 (Steel fab per the January 24th, 2003 meeting minutes (**Exhibit 54**) has not commenced (Baseline

schedule allows for fabrication duration and lag of thirty three calendar days prior to commencement of Building A steel erection), that there will be no further impacts form concrete foundations and that the remaining design can be complete by January 31st, 2003 and fabrication by the 28th of April 2003:



The impact on the contractual schedule is far worse, with the steel driving the agreed baseline logic to an October 5th, 2004 completion date, more than two months behind schedule.



As of the 27th of January, 2003, as noted earlier, outside temperatures are running between 9 and 20 degrees. **Exhibit 55.** Had the original project schedule pace been adhered to by the foundation and excavation contractors the underground would have been two weeks from completion rather than what is transpiring:

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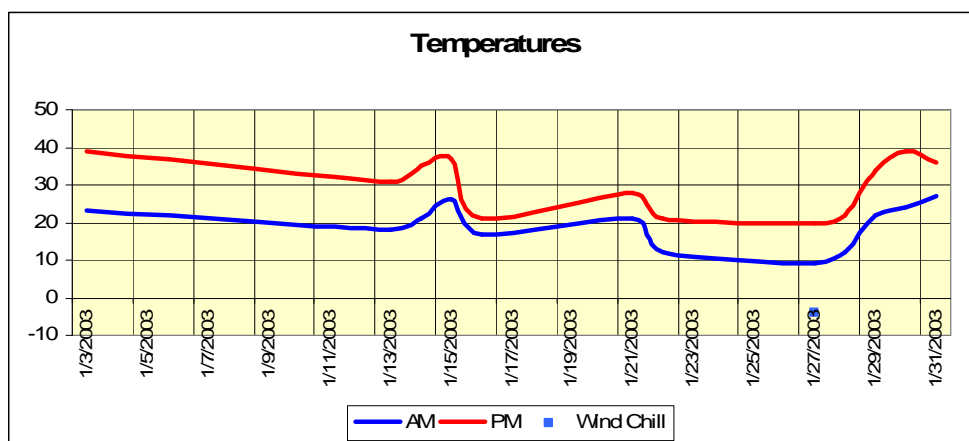
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- Approximately 50% of A and less than 25% of C two weeks from planned completion
- Working piecemeal portions of Areas A and C due to sporadic and out of sequence performance by the foundation contractor
- Failure to establish a level, in tolerance building pad
- Failure to vacate the building area in a reasonable period of time

On the same January 27th, 2003 date EDiS transmits approved shop drawings for Area D. Given that the baseline schedule had a steel review and approval allowance from September 13th through November 7th, as of this date the process is some (11/7/02 Vs 1/27/03+) eighty one (81) calendar days behind schedule with no relief in the near future. **Exhibit 56.**

Work on Area A underground continues on the 28th through 31st of January 2003 in temperatures ranging between 9 and 36 degrees, little more than a week from when McDaniel should have vacated the open site (2/11/03).

The following is a brief recapitulation of Winter temps experience at the onset of January weather at the site. **Exhibit 57.**



At the conclusion of this month (1/31/03) McDaniel continues to progress A, as previously noted, and D underground (Storm & Sanitary).

Work continues on the underground in A area between February 3rd and 14th amidst inclement weather more than two weeks beyond the scheduled completion of all underground. **Exhibit 58.**

The February McDaniel daily report (**Exhibit 59**) comments note:

- 2/4/03 - No work bad weather
- 2/5/03 - No work job wet and muddy

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So that there is no confusion that failure to afford an accessible site and timely foundation installation is why the critical project pace is lagging and the February 14th 2003 McDaniel daily log (**Exhibit 60**) clearly calls out the basis for impact to underground installation to date:

Merlin VanderMark (NDK General Contractor) needs to complete at least one area (Areas A-C)

The February 5th superintendents (School Superintendent) meeting notes (**Exhibit 61**) that the project is four weeks behind schedule, but in much better shape than the Indian River School with a projected start of steel within the next two weeks. Given that the February 4th, 2003 project meeting number 12 (**Exhibit 62**) noted that foundation walls had only just completed on the A building, and noting that the overall time for foundations and foundation walls is under three months with a planned completion of January 14th, 2003, some three weeks prior, it would appear that A Building may be four weeks behind, but the remaining buildings will vastly eclipse this A Building lapse. **Exhibit 63.**

Clearly the superintendent was not being kept adequately informed of the level of delays being experienced as of this date in that in that the steel, in the forthcoming March monthly EDiS Owner report (**Exhibit 64**) will slip to April 21st, and in the April monthly reporting (**Exhibit 65**) will slip to a planed start of May 12th. These seriously flawed interim projections, aside from requiring contractor's to maintain inefficient crewing, demonstrate the lack of control and/or knowledge the construction manager has regarding the progress of this project.

On the 20th of March 2003 foundation and building pad work had progressed to such a level that McDaniel was able to complete their first underground, including test, Sanitary Waste & Vent Piping in Area D First Floor. **Exhibit 66.**

The EDiS Monthly report notes:

March has been a more productive month. The weather is improving and the crews are able to move the site with much less effort.

Area A is being prepared for installation of structural steel which should start April 21st, 2003.

Areas E, D and C are under construction and will be prepared for slab on grade installation by the end of April followed by erection of the steel structure.

Area F will proceed with the installation of concrete foundations and below grade masonry followed by the remaining section of Area B.

Mechanical underground work is nearly complete in areas, E, D & C. The plumbing contractor will move to Area F this week.

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During the impacted, and largely unforeseen winter performance period McDaniel incurred \$50,799 in labor (October 2002 - March 2003) (**Exhibit 67**), whereas his budget reflected an estimate of 648 hours, or \$20,736 to perform the same work. Therefore, as of March 30th, with underground still incomplete due to delay in foundations, foundation walls and sub grade preparation, McDaniel has overrun their bid estimate by (50,799 - 20736) more than \$30,000 with E, D and C ongoing and F & B yet to start. Clearly McDaniel exceeded under slab utility estimates several time over coping with poor access, unforeseen weather impact and general project delays.

The EDis Monthly report continues by noting:

Currently the overall project is (8) eight weeks behind schedule.

Predicated on the most critical path (either concrete or steel) the schedule as originally bid will reflect impacted progress if the information forwarded by EDis is accurate.

Sadly the EDis monthly project report, to the district, for March of 2003 (**Exhibit 68**), appears inaccurate in that the schedule attachment represents that footers and piers for Areas A, C and D were completed in early December, January and February, respectively. Yet EDis's project meeting minutes of March 4th, 2003 note (**Exhibit 69**) that excavation for footings and piers in areas A, C and D are ongoing and that EDis had requested that NDK complete the piers in C to afford the mason work.

The March 18th, 2003 EDis progress meeting notes (**Exhibit 70**) that:

- NDK has not corrected the outstanding problems with the piers in areas A, C and D
- It was noted that many, if not all the piers installed, are installed incorrectly, not per plans and specifications
- Incorrect elevations at the footings is slowing down masonry construction

Clearly NDK was nowhere near completing the footings and piers as of March 18th, 2003 (**Exhibit 71**) in Areas A, C and D, no less in December, January and February as erroneously reported by EDis to IRSD in March of 2003. From review it was be ill advised to base purported schedule impact on the monthly schedule updates referenced performance, but, instead, preferably on the project meeting minutes.

It appears that NDK's performance became disturbing enough that on the 27th of March, 2003 EDis, IRSD, BMG and NDK met to discuss NDK's performance. **Exhibit 72**. It had been the IRSD and EDis belief that NDK's bonding representative would be in attendance, but they were not present. What was cited by the owner, and EDis, regarding performance of this critical contractor over the past five months, was:

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- Arbitrarily oversize piers and foundations
- Placing anchor bolts and accessories with proper templates and forms
- Inaccurate elevations on footers and foundations
- Insufficient notification of project alterations
- Delaying of construction due to performance by contracts including within NDK's scope of work, i.e. survey/layout
- Not responsive to written communications from Construction Manager pertaining to contract obligations
- Insufficient quality control

Of importance, looking forward is EDiS' suspension of NDK work in area F and B (March 27th, 2003 Mtg. Minutes Item 7) (**Exhibit 73**) until correction of A, C and D areas were corrected further impacting project critical progress.

Clearly NDK's actions had not only delayed the project, and afforded McDaniel, among others, far more difficult working conditions, but now will require extensive reconstruction while additionally suspending any possible immediate progress in areas F and B.

That the owner was ready to terminate NDK (**Exhibit 74**), who truly had waylaid the contract that now was, per EDiS eight weeks behind schedule, and three months per our March analysis, is a stark contrast to their actual termination of McDaniel whose only failing was to continue to attempt to achieve progress working under the conditions of active interference and acceleration fostered by EDiS's and IRSD management.

That no foundation structure is available for backfill as of this March 27th, 2003 date, and noting the planned contractual completion for this critical work sequence of January 14th, 2003, the immediate incurred delay is currently two months with only a portion of the foundation work progressed, and much of that erroneously installed.

Taking into account the corrections requested and the remaining time to complete A through E and then mount F and B (Three months per initial foundation break out by EDiS) it would appear the foundation work is in excess of four months behind schedule.

As of April 1st, 2003, eight months into the original project performance duration (8/28/02 - 5/31/04) of 642 calendar days, or approximately 37% of the contract duration exhausted the project meeting number 15 (**Exhibit 75**) notes:

- 15.2.3 Footing inspections are ongoing (footings were to complete on February 20, 2003, forty days prior).
- No schedule update.
- Ponds are currently being pumped and prepped for excavation
- Revisions to anchor bolts Murphy to provide a proposal
- Croll is 95% complete on force main. Work should be completed 4/14/03.

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- Croll is working on entrance road construction.
- NDK has been directed to focus on Areas A, E, D and C to prepare for structural steel erection. These areas must be complete by 4/18/03.
- Murphy is 90% fabricated on Area A steel. Steel will arrive 4/21/03.
- Area F is the only remaining shop drawing (Steel) to need approval. EDiS will investigate
 - (These submissions were to have been complete November 7th, 2002, five months earlier)
- It was noted that slabs on grade for Areas E, D and C need to be poured as soon as possible to keep masons on project.
- Areas C, D and E are ready for stone
- Underground plumbing is 90% complete in Areas A, C, D and E
- EDiS requested Tieder start their under slab utility immediately following the work by McDaniel (Tieder to start on 4/2/03)

As a result of these attested progress events the contract project baseline schedule with initial revision defined logic would suggest the following impact as of April 1st, 2003 for:

Footer, Foundation Wall Construction

Activity	Start	End	2002		2003				
			Q3	Q4	Q1	Q2	Q3	Q4	Q1
Mobilize	08/05/02	08/09/02	█						
Start Construction	08/09/02	08/09/02	◆						
Establish Soils Erosion Control	08/09/02	04/30/03	█	█	█	█	█	█	█
Sitework & Utilities	10/14/02	09/15/03		█	█	█	█	█	█
Footers, Foundation Walls	11/21/02	07/25/03		█	█	█	█	█	█
Concrete Administration	11/21/02	04/25/03		█	█	█	█	█	█
Concrete C Classrooms	02/17/03	04/18/03			█	█	█	█	█
Concrete F Gym/Cafe/Mech Room	04/22/03	07/04/03				█	█	█	█
Concrete D Classrooms	02/17/03	04/25/03			█	█	█	█	█
Concrete E Classrooms	02/17/03	04/25/03			█	█	█	█	█
Concrete - B Auditorium- AG	06/23/03	07/25/03					█	█	█

Under slab MEP Rough

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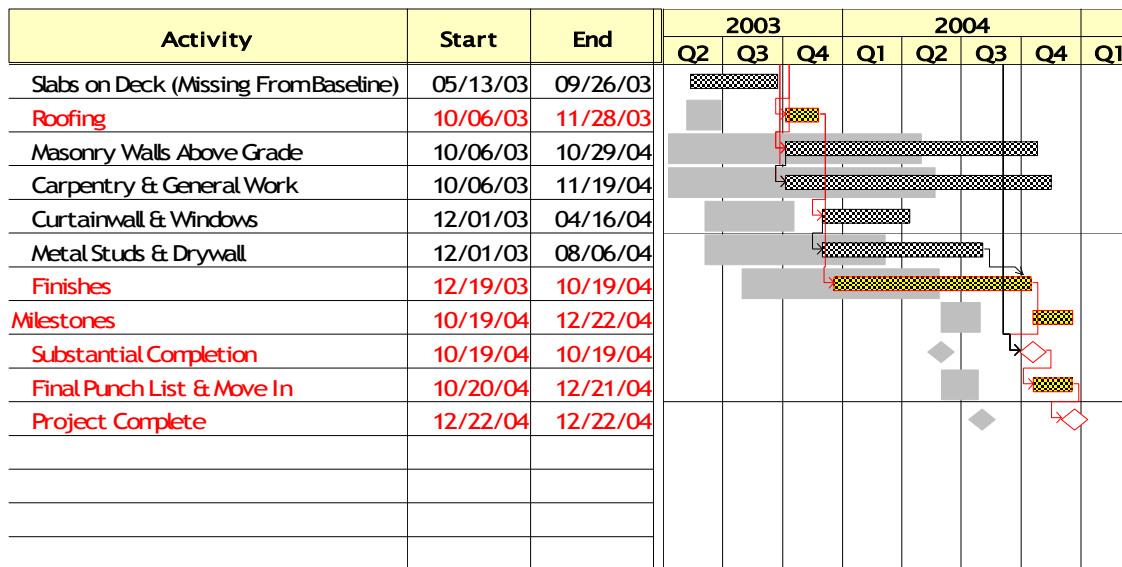
Activity	Start	End	2002	2003				2004		
			Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3
Steel Shop Drawings	09/23/02	04/30/03								
Prepare Building Pad	05/01/03	05/28/03								
Hydraulic Elevator	04/21/03	08/27/04								
Fire Protection	04/21/03	08/27/04								
Mechanical & Plumbing	04/21/03	08/27/04								
Electrical	04/21/03	08/27/04								
Underslab Utilities	01/13/03	08/15/03								
Area A Administration	01/13/03	04/18/03								
Area C Classrooms	02/17/03	04/18/03								
Area D Classrooms	02/17/03	04/18/03								
Area E Classrooms	03/17/03	04/18/03								
Area F Gym/Cafe/Mech Rm	07/07/03	08/01/03								
Area B Auditorium- AG	07/28/03	08/15/03								

Slabs on Grade & Structural Steel Placement

Activity	Start	End	2003									
			03	04	05	06	07	08	09	10		
Slab on Grade	04/21/03	09/19/03										
Area A Administration	04/21/03	05/06/03										
Area C Classrooms	04/21/03	05/06/03										
Area D Classrooms	04/21/03	05/06/03										
Area E Classrooms	04/21/03	05/06/03										
Area F Gym/Cafe/Mech Rm	08/04/03	08/29/03										
Area B Auditorium- AG	08/18/03	09/19/03										
Fabricate Steel	03/17/03	05/30/03										
Erect Structural Steel & Metal Decks	04/28/03	10/03/03										
Area A Administration	04/28/03	05/12/03										
Area C Classrooms	05/01/03	05/15/03										
Area D Classrooms	05/15/03	05/29/03										
Area E Classrooms	05/29/03	06/12/03										
Area F Gym/Cafe/Mech Rm	09/05/03	09/19/03										
Area B Auditorium- AG	09/22/03	10/03/03										

Remaining Performance

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Therefore as of April 1st, 2003, using reported expectations for footing, foundation, U/G, Slab on Grade and Steel Placement, in conjunction with the contract schedule logic, the impacted contract completion date is October 19th, 2004 for the substantial completion, and December 22nd, 2004 for overall completion.

More than simply an issue of longer durations, sporadic and piecemeal performance, inclement weather, poor access and egregious delays by predecessor contractors, the fact is that the work, or at least the promise of work, is now being stacked due to the unwillingness to recognize the true impact to the performance durations. **Exhibit 76.** This stacking will ultimately exacerbate planned productivity, resulting in substantive labor overruns.

Given that the schedule projects an impacted performance completion of October 2004 so early in the impact analysis, and noting

- that the above noted dates are largely eclipsed,
- that future logic will be hindered by poor performance from the steel, masonry and roofing contractors,
- that the steel start dates, in this schedule, will not start on the dates suggested
- that the actual time of termination was a month from the dates currently projected, in November 2004,

there appears substantive basis to suggest that IRSD, EDiS and possibly BMG did not objectively review McDaniel's performance and, as a consequence, unfairly terminated McDaniel's contract. Given the preponderance of issues of critical delay prior to McDaniel's performance and the progress achieved by McDaniel prior to termination the possibility of termination to obfuscate active interference and untimely resolved delay impacts is a possibility.

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As of the April 15th, 2003 EDiS project meeting (**Exhibit 77**) NDK continues to focus on areas A, E, D and C, with F and B still suspended until A, C, D and E areas are ready. The concern is that why was NDK not asked to accelerate and add labor rather than directed to ignore a sizable portion of the contract (Buildings F & B). In essence by not taking the very same actions that were implemented with McDaniel, the Owner and EDiS facilitated failure to progress the foundations, which, accompanied by the time lost due to incorrect concrete placement, and the belated fabrication of steel, followed by untimely roofing performance, are the critical impacts to progress.

At this juncture in the contract, April of 2003, McDaniel begins to supply basis of impact, and notice of claims, to the IRSD/EDiS. Specifically on April 22nd, 2003 McDaniel notifies EDiS:

Since last December we have been delayed by the lack of progress by the concrete contractor. The (2) main problems have been his lack of manpower and his inability to pour the footer in the correct places. Unfortunately we will be forced to pull again and stop work again.

We can't finish any of the wings because of numerous loose ends. For example C, D and E wings need stone to be installed. Also in A I need the footers to be installed correctly and with no loose ends.

My biggest concern is that the steel will be here shortly and then I won't be able to work in this area again. Everyday the job gets farther behind due to lack of work by the contractor and everyday our costs increase.

(Exhibit 78)

On the following day, April 23rd, 2003, McDaniel completed F Wing storm drainage and sanitary waste - vent piping, and tested same. **Exhibit 79**

Rather than steel arriving April 21st, 2003, as referenced in the March reports, or May 12th, 2003 as referenced in the April Owner report from EDiS, in fact, as of May 1st 2003 further questions, incorporated in Murphy RFI #25 (**Exhibit 80**) were being posed regarding Area "B" structural steel. On the 2nd of May RFI #26 (**Exhibit 81**), dealing with Area F structural steel clarification was transmitted, and in request Murphy noted that failure to expedite response could delay the project.

On the 5th of May 2003 EDiS confirms that NDK is in fact impacting McDaniel performance, but references the requirement of contractors to layout and coordinate their work. **Exhibit 82.**

Oddly McDaniel did not complain of failure in layout or coordination, simply McDaniel was noting the continued failure of NDK to staff the project and the undeniable delay

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it had caused to the project that would ultimately result in critical delays to the project. **Exhibit 83.**

EDiS closes their response to McDaniel's notice by noting that they believed the issues of impact, noted in McDaniel's letter (**Exhibit 84**), would be rectified by the end of April. As we have seen from the size of the delays and their broad impact on work to date there is literally no way that the five months of lost critical performance to date could be mitigated with the management, and contractors, discussed to date.

In fact if it was the interior to right a modicum of the impact incurred to date the compression necessary, if the substantial completion milestone were not to be extended, would amount to a constructive acceleration of McDaniel's contract.

As a follow up to their initial notice, and response to EDiS's response of May 5th, on the 8th of May, McDaniel (**Exhibit 85**) sets forth a seminal notice of impact covering the impact of events to date:

We previously wrote you on April 22nd, 2003 to advise you of the delays on the project and how they are affecting our progress. Pursuant to paragraph 4.7 of the General Conditions, we write to formalize our claim with the School District for an extension of time (Paragraph 4.7.8) and additional cost (Paragraph 4.7.7) as a result of delays and inefficiencies at the Project.

As you are aware, Specification Section 1305 sets forth the terms and provisions concerning the construction schedule. In particular paragraph 1.1 indicates that:

The contractor agrees to adhere to intermediate milestone dates of substantial completion and final completion established herein. The contractor also understands that all work must be performed in an orderly and closely coordinated sequence in order to achieve the specified milestone and completion dates, and the contractor hereby agrees to perform his work in conformance with his pre bid construction schedule established herein or with the then current an approved Project Schedule.

Attached to Section 1305 is a schedule which sets forth the following activities start and finish dates:

Activity	Start	Finish
Footers, Foundation Walls	10/23/02	1/14/03
Under slab Utilities	12/4/02	2/11/03
Slab on Grade	1/15/03	4/8/03
Erect Structural Steel	2/26/03	5/6/03

In preparing its bid to the school district for the plumbing and mechanical work, McDaniel reviewed specifications, including the General Conditions and Section 1305, and relied on them to determine its price for the work. Thereafter, McDaniel executed a contract with the School District, which incorporated the specifications and the

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expectation that the Project would proceed as set forth in the schedule. As set forth below, the Project has not proceeded in the manner required by the initial schedule.

On September 17th, 2002, at progress meeting number 2 EDiS issued and reviewed a schedule data date of September 18th, 2002. During the meeting, the Owner and EDiS, among others, elected to extend the duration of the footers and piers for Area A by three weeks. This decision was the first of several circumstances delaying the underground work to be performed by McDaniel.

On October 29th, 2002, EDiS issue an updated schedule data date of October 3rd, 2002, which revised dates for, among others things, the initial phase of work, including Area A. During that meeting it was stated that layout for the building footers would start by November 1st, 2002, but that the work might be impacted by weather. It was expected that execution of footers in Area A would start on November 3rd, 2002. As we know from the meeting minutes dated November 26th, 2002 (Progress Meeting No. 7) The November 7th date did not hold.

Activity	Start
Footers, Foundation Walls	11/21/02 (Actual)
Under slab Utilities	12/20/02
Slab on Grade	1/14/03
Erect Structural Steel	2/4/03

On or about December 2nd, 2002 McDaniel submitted to you an activity schedule, which set forth expedited start and completion dates for the work under our contract. We specifically identified work activities for the various areas of the Project.

For example we expected to install our underground plumbing in Area A starting December 12th, 2002 and finishing January 1st, 2003. Similarly for Areas C, F and B, we show start and finish dates for underground work and other activities. As I am sure you are aware, none of the above dates have been met. In fact footers for Areas A, C, D and E were only recently completed. With respect to area F, only part of the exterior footing has been completed. No Footings have been installed in Area B.

Presently there is not steel erection on the Project even though, according to your November 19th, 200 schedule, the steel erection should have been completed by April 1st, 2003. With respect to the slab on grade, no work has started, nor has any stone been placed in any area of the Project so that McDaniel can proceed with his underground utility work.

The initial contract schedule indicates that our underground utility work was to begin on December 4th, 2002 and finish February 11, 2003. None of this work has started, let alone been completed, because of lack of progress by the owner's concrete contractor. As a result McDaniel Plumbing and Heating has been forced to find other work to perform, which is out of sequence with its original bid proposal to the owners.

In view of the above, we expect the owner to provide, at this point in time, a five (5) month extension of the completion of our work. Additionally we expect an adjustment

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to our contract price for the delays and inefficiencies occurring on the Project. We intend to provide you with details concerning our additional costs including labor overruns, extended field conditions costs and extended home office costs to account for the delays caused by with the owner or its concrete contractor. We are in the process of determining these additional costs and will transmit them to you once they are finalized. Please provide us with the owner's response in accordance with the provisions of Article 4.7 of the General Conditions.

On May 7th, 2003 McDaniel responded to EDiS' re request for information regarding dimensions and location of required roof openings (**Exhibit 86**), initially requested by the steel fabricator in their RFI # 26 dated May 2nd, 2003. At that time McDaniel's note that they had previously marked up and transmitted a set of drawings depicting the openings and penetrations required.

The project meeting number 19, dated May 27th, 2003, nearly three weeks past the second McDaniel notice, and the project continues to languish:

- Steel erection has started
- Conectiv will be forwarding a proposal to the owner for permanent electrical service
- EDiS would like to move towards getting the M/E room floor poured as soon as possible
- Weather has delayed steel erection by three days
- Enterprise will work with NDK to clean footings so that block foundations can be installed.

(Exhibit 87)

Clearly, from these references, as of May 27th, 2003, some nine months into the contract performance period, or 42% of the contract performance duration exhausted, and with foundation walls still ongoing, while, as noted in the McDaniel letter of May 8th, the footings are only partially complete in B and yet to start in F, the steel erection has commence. In fact Meeting 17 dated April 29th, 2003 (**Exhibit 88**) compared to meeting 18 dated May 13th, 2003 (**Exhibit 89**) brackets the period of steel erection while the Superintendent's meeting minutes from May 12th, 2003 (**Exhibit 90**) reference a May 9th start and the EDiS Monthly report for May (**Exhibit 91**) notes completion on or about June 9th, 2003 for Building A. Given that all steel was to have completed by May 6th, the completion of only A on the 9th of June is a stark contrast.

As referenced earlier, that steel commenced as of May 13th, 2003, only confirms the slippage from the original start date of February 23rd, 2003, or a net loss of three months. Note that the five month overall delay being claimed will result from delinquent footing and foundation impact on the ability to complete the steel, pour slabs and being masonry in earnest and the subsequent impact on roofing.

On May 27th, 2003 McDaniel tests Area F Boiler Room 6" fire and 4" Domestic Water Supply. **Exhibit 92.**

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The monthly EDiS project report for May 2003 notes that

- The steel erection will complete in A building, and work progressed on the C building steel, by the 9th of June 2003,
- Areas A, D and C are prepped and ready for concrete pours. All should be done by June 13th.
- Foundation concrete and masonry are being performed in B and F,
- The project remains ten weeks behind schedule

See **Exhibit 91**.

The ten week EDiS assessment of impact, based on a May 6th baseline completion for a two and a half month performance period would suggest a minimum of three months impact. **Exhibit 93**. Noting that slabs were to have been complete May 8th, after a performance duration of three months, and in reality not a single slab was placed as of the end of May would suggest, again, three months impact.

Despite the resounding basis for a thirteen week delay impact at the conclusion of May, the Superintendents report notes (**Exhibit 90**), only weeks earlier on May 12th, 2003, a five week delay, while the Building and Ground's meeting minutes of May 13th references no impact. **Exhibit 94**.

Clearly, given the prevalence of eclipsed milestone dates there can be no basis of an impact assessment of less than three months, and surely not five weeks or zero weeks. Possibly the inability of the Superintendent, or Building and Grounds to receive accurate input, or report same, is one of the reasons why the Owner and their agents unfairly perceive McDaniel as a stand alone impact to this contract outside of select weather impacts. Given the number of reported impacts and the evident failings of NDK, so early in the project one would have to question how the owner considered McDaniel in default.

By the 3rd of June 2003 the project would have been under construction for more than nine of the overall twenty one months, or slightly under 50% of performance time consumed. Per the baseline schedule the roofing should have been complete, curtain wall in progress and interior finishes starting in earnest. In actuality, as of this date we do not have steel complete in any building with A nearing completion and C to start June 12th (MoM 20), otherwise there is no progress on roofing, and little on above grade masonry, slabs while the building is without permanent power, yet another impediment to McDaniel's timely performance of the contract.

To that end, on the 3rd of June 2003 Frank McHenry of McDaniel notes:

There is no temporary electric on site as per spec section 01511. Therefore in order to continue working we have rented a generator and will be billing you for it plus the daily

labor to service the generator. This will continue until temporary electric is installed as per specs (No longer than a 60' cord needed)

Exhibit 95

The area F kitchen and toilet under slab sanitary waste and vent piping passes test on the 4th of June 2003. **Exhibit 96.**

On June 9th, 2003 McDaniel for the first time is installing gas piping in block walls in Area C (**Exhibit 97**), while the steel erection continues in Area A, and Area B requires backfill. (**Exhibit 98**). The following day on the 10th of June underground is complete in F, Area A underground continues to be laid out and neither steel nor concrete workers are on the project this day. On the 13th of June a concrete slab was poured in Area E. (**Exhibit 99**)

By the 11th of June Area F under ground was complete and McDaniel remobilizes to Area A to commence above ground rough. **Exhibit 100.**

Yet as Area F underground is completing, on the 10th of June 2003 (**Exhibit 101**) McDaniel cannot start Area B (Incomplete footer installation) or continue Area A (Steel work overhead). Given that all foundations were to have been completed in January 2003 the Area A delays and those in Area F have extended this critical work scope five months.

At the project meeting of June 24th, 2003 (**Exhibit 102**) McDaniel continued to reference site conditions that were impacting their performance (Item 17.3.14), this time the wet nature of the building F pad that is waylaying their ability to place underground piping. Given that Croll hasn't been on the job for several weeks, that the site piping remains incomplete, months beyond the scheduled dates, it would appear that the site is suffering from abandoned site water management and the under slab MEP is being correspondingly impacted which will likely extend the performance time of this installation, resulting in higher labor hour tally. **Exhibit 103**

Additionally, during the June 24th, 2003 meeting it is noted that:

- E & F Steel have no been delivered to the site
- A, B, E & F have not received any slab pours
- Second floor of A are (sic) to be poured on 7-2-03

As of the 26th of June 2003 (McDaniel Reporting) McDaniel has begun duct installation, on the 2nd floor of building A, off of metal deck (a significant impediment to productive installation), setting floor and roof drains in building A 2nd floor, and continuing to forward underground in B. **Exhibit 104.**

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By the 3rd of July steel decking in Areas C & D have not been set, while McDaniel continues underground in F and domestic water hangars in C. **Exhibit 105.**

On the 7th of July McDaniel places C Wing second floor sanitary and vent under test. **Exhibit 106.**

By the 8th of July gas hangars and piping is progressing overhead in C, but in that daily report McDaniel (**Exhibit 107**) cites the lack of adequate steel erection forces and the need for NDK to backfill B to allow underground to proceed in earnest. As of July 8th foundations appear to have been completed in B almost six months behind schedule:

Activity	Start	End	2002	2003		
			Q4	Q1	Q2	Q3
Footers, Foundation Walls	11/21/02	07/15/03				
Concrete A Administration	11/21/02	04/25/03				
Concrete C Classrooms	02/17/03	04/18/03				
Concrete D Classrooms	02/17/03	04/25/03				
Concrete E Classrooms	02/17/03	04/25/03				
Concrete F Gym/Cafe/Mech Room	05/01/03	07/15/03				
Concrete - B Auditorium - AG	06/03/03	07/08/03				

The July 8th project meeting notes (**Exhibit 108**) that Croll has not remobilized the project on the 26th of June as previously promised and, in fact, as of that date, been absent from the site for more than a month. EDiS notes in the July 8th, 2003 item 21.2.1:

Area C deck need to be completed by Murphy Steel. Once the deck is completed the other contractors including masonry, mechanical, electrical and metal studs will have areas to work.

Given the need to prep underground, building pads, site work, roadway, lay down areas, etc..., when Croll is absent the overall project performance suffers.

The July 11th daily report (**Exhibit 109**) notes a number of impacts arising from NDK's failed performance, including, rough grading F to allow drain and cleanout installation and slab pours, backfill of ditches in E to allow overall underground. Note that project meeting minutes had previously referenced these areas as complete, but it appears that come back work is necessary due to NDK's inability to keep up with the contract schedule, now many months behind the baseline pace.

On July 15th, 2003 Gas Mains at the first level of C are under test while the underground storm piping is completed in Area F. **Exhibit 110.**

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As of the 16th of July McDaniel continues underground in A (Water is required to be pumped this morning prior to proceeding) while ductwork and domestic water continue in Area C. **Exhibit 111.**

The July 21st - August 4th, 2003 (**Exhibit 112**) look ahead sequencing noted that NDK has not completed:

- Area B foundations,
- A sub grade prep,
- Second floor C deck pour,
- 2nd floor D prep and pour,
- Steel prep Area F,
- Pour mechanical rooms in Area F

Additional areas of noted delay are the mason's delayed completion of F foundation walls, the remaining steel erection in Areas E & F and the need to set stair in C, D and E, and the failure to complete the site storm sewer lines that would allow building drainage once roofs have been installed, or at least, now, to relieve some of the flow from the roof decks. **Exhibit 113.**

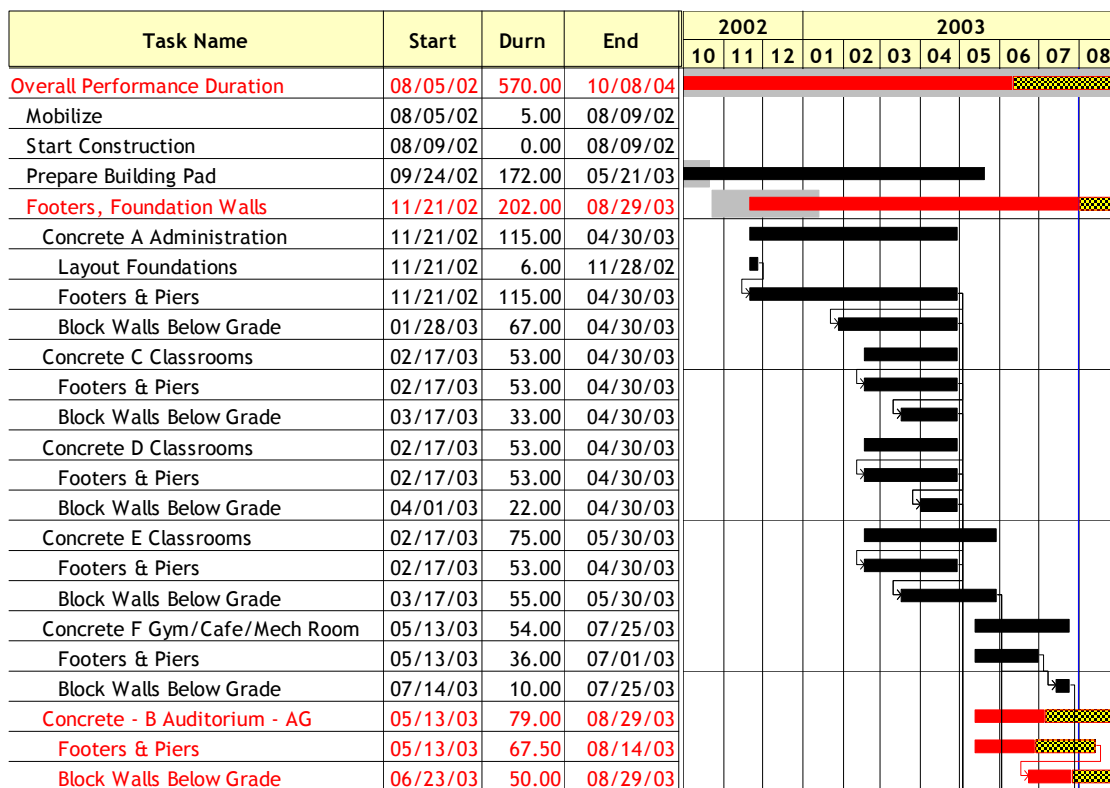
As of July 25th, 2003 ductwork has commenced on the 2nd floor of C, an area without any roof (**Exhibit 114**). Note Mtg. 22 wherein CTA is notified that work in Areas C, D & E will be needed within the next 4-6 weeks (**Exhibit 115**). Especially disconcerting is that NDK, the delinquent site concrete contractor is performing the metal stud erection that is impacting portions of C pours and generally will further waylay future project progress.

The continued inability of EDiS or the owner to promulgate NDK to perform has, along with the undermining by the steel contractor, been the critical impact to the project to date.

Based on the information in the July reporting the following excerpts represent actual progress (MPH 08.TLP - **Exhibit 116**):

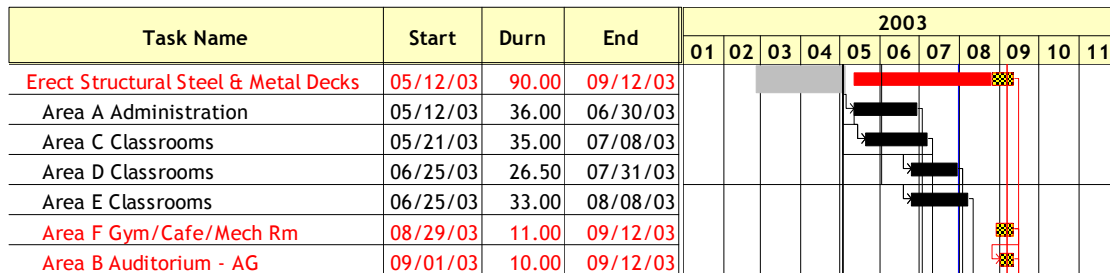
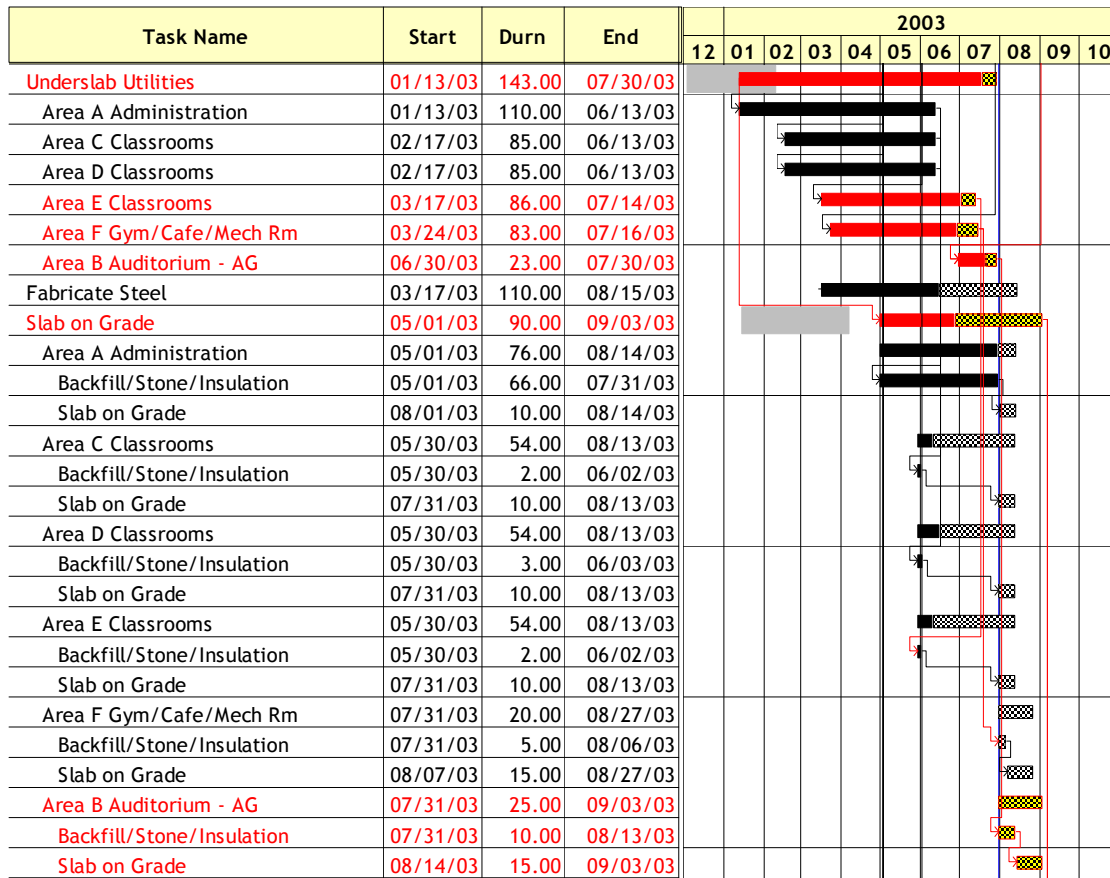
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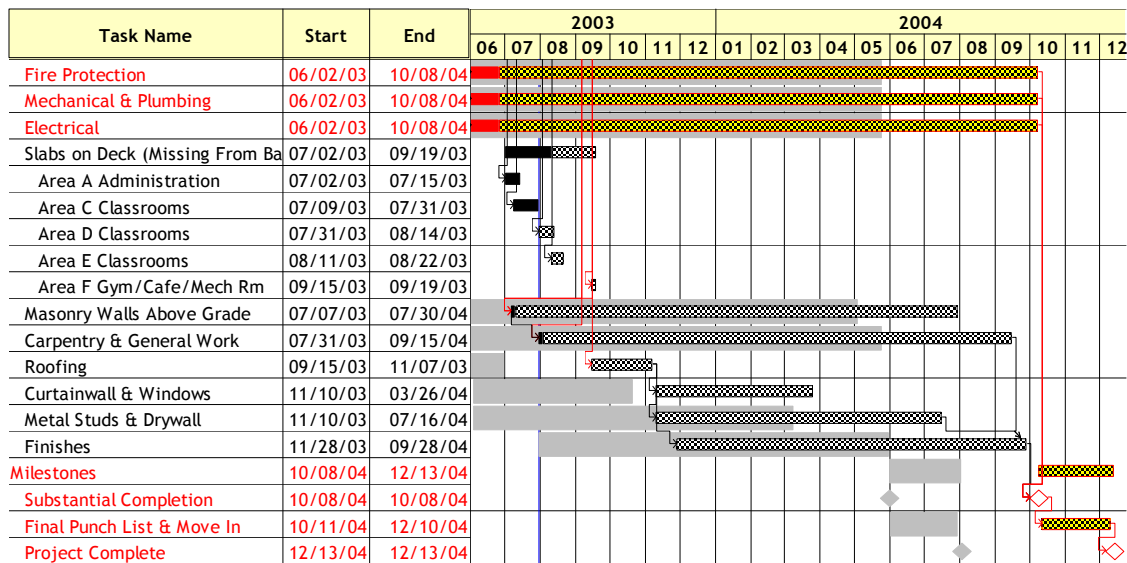


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Clearly, from this analysis the project has slipped four and a half months from May 31st, 2004 to an impacted contract substantial completion of October 8th, 2004, and the roofing contract, which will yield further impacts, has yet to begin.

The August 4th schedule look ahead (**Exhibit 117**) largely mimics the July 21st variant due to failure of NDK and Murphy to perform the bulk of previously projected activities. The performance outlined, as of August 4th, 2003, is:

- Pour first floor A 8/11/03 (*Scheduled 1/15/03, six and a half month impact*)
- Complete below grade concrete in Area B & backfill foundations (*Scheduled 1/14/03, seven month impact*)
- Prep and Pour 2nd floor C 7/29/03 (*Scheduled 2/11/- 24/2003 [7/03 Update] five month impact*)
- Prep and Pour 2nd floor D 8/4/03 (*Scheduled 2/25/- 3/10/2003 [7/03 Update] five month impact*)
- Complete Decking Area E (*Scheduled completion of steel erection 5/6/03 [Baseline] three month impact.*)
- Complete Area F Steel Erection 8/30/03 (*Scheduled 5/6/03, four month impact*)

Noting that the building is to be completed in less than nine months, and that a total of thirteen months has been expended, to still have partial steel erection, slab pours and no roof is a serious critical impact, and assuredly has hampered contract performance.

In addition these “projected” accomplishments (8/4/03 schedule look ahead) demonstrate that the July 31st, 2003 impact update is possibly, substantively conservative and actual progress, as noted in each building above is between five and seven months behind schedule. Though some work can proceed ahead of the impacted

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pace, the net result is that the whole building has to progress per the plan, and if not, equitable adjustments must be allocated in a timely fashion.

The August 5th, 2003 EDiS CPM Schedule update number 23: "Planned work for 2003-08-04 to 2003-08-18" (**Exhibit 118**) notes that:

Concrete - NDK

D: 2nd floor pour *NOT DONE*
C: 2nd floor pour done 2003-07-28
C: Ext metal studs started
B: Below grade concrete and backfill *NOT COMPLETE*
A: 1st floor pour *NOT DONE*
Penthouse floors have not been poured
F: Mechanical/Elect rooms not poured

Murphy

F: Erection not done
Stairs not complete

Enterprise Masonry

C: Begin brick 8/4
A: Complete 2nd floor walls on 8/18
C: Start 2nd floor CMU walls
A: Start 1st floor CMU walls - waiting on slab on grade
Complete all stair wells
Complete wall at end of area E

As if to demonstrate how the record maintained in the progress meetings does not necessarily reflect the true project impact the A building steel, previously noted to have completed on June 30th, 2003 remains ongoing through August 11th, 2003, more than three months behind schedule for the earliest building in the erection sequence:

8/11/03 Bldg & Grounds Meeting Minutes

A: All steel and decking complete, steel framing in classroom
D: Steel framing to start next week

(Exhibit 119)

Possibly in an effort to ameliorate the delay impact EDiS's August 2003 schedule update has relinquished the month of float/turnover between substantial and final completion afforded in the baseline schedule.

C and High A roofing commencement was set for September 8th, 2003, on the 13th of August by EDiS in their direction to all contractors.

8/13/03 - EDIS Ltr: McCone to All Contractors

C: Ext metal studs, sheathing and masonry are proceeding. Roofer has to get going
Roofer promises to deliver and stage materials for area C, area A high roof and C

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penthouse on 2003-09-02. Roofing will start 2003-09-08.
(Exhibit 120)

The schedule activity look ahead listing of August 19th appears to regress with B below grade concrete shown incomplete versus the backfill of same on prior look aheads. Area A slab on grade is referenced to be complete August 27th, 2003, nearing five months beyond the baseline date.

Not that NDK is delaying only the foundations and slabs, the job meeting of August 19th **(Exhibit 121)** notes that NDK has completed exterior studding of Area C, but has yet to address the C to A high roof transition necessary for commencing the first area of roofing on the project. That the building would be studded and sheathed, to any extent, without a roof, is poor logic and will hinder mechanical overhead installations.

Oddly with overhead mechanical performance proceeding in areas C, D, E and A. **Exhibit 122.** (Note areas F and B are under construction by Murphy and Kemenash and thereby barring McDaniel performance). On the 20th of August 2003, McDaniel receives a notice from EDiS that they are falling behind schedule. **Exhibit 123.** This is the first of many erroneously founded assertions of delay by EDiS who, faced with failed performance by NDK, Murphy and CTA that has generated to date five months of impact, has the temerity to argue McDaniel culpability.

The following excerpt from the August 19th, 2003 meeting #24 illustrates the failed progress to date by each of these contractors and the ultimatum by EDiS the Roofing will start in C and A building as of September 8th, 2003 **(See Exhibit 121)**:

8/19/03 CPM M 24

NDK - Concrete

A: 2nd floor poured, this is scheduled for August 27th, 2003 *(Omitted from baseline. Per the second schedule this should have been complete February 13th, 2003, 6+ months impact)*

F: Remainder will be poured after steel is complete *(Omitted from baseline. Per the second schedule this should have been complete May 8th, 2003, 3 months impact)*

B: Will be ready for steel by end of August *(Omitted from baseline. Per the second schedule this should have been complete May 1st, 2003, 3+ months impact)*

Murphy - Steel

F: Erection started 7/13/03 *(Per the second schedule this should have been complete April 17th, 2003, 4+ months impact)*

B: Erection will start 9/15/03 *(Per the second schedule this should have been complete May 2nd, 2003, 5+ months impact)*

Enterprise Masonry

A: Cannot work on 1st floor until poured. Focusing on ext masonry walls

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A: 2nd floor mostly complete
C: Brick veneer in progress
D: Brick veneer in progress
Drywall
A: High to low roof transition: NOT STARTED - LATE

The fact that, as of August 19th, 2003, no building is under roof, and that the project is two months beyond the planned roofing completion, that steel will, likewise, is completing more than five months late and that foundations are as much as six to seven months late, demonstrates that the critical delays to the contract were well before McDaniel's involvement.

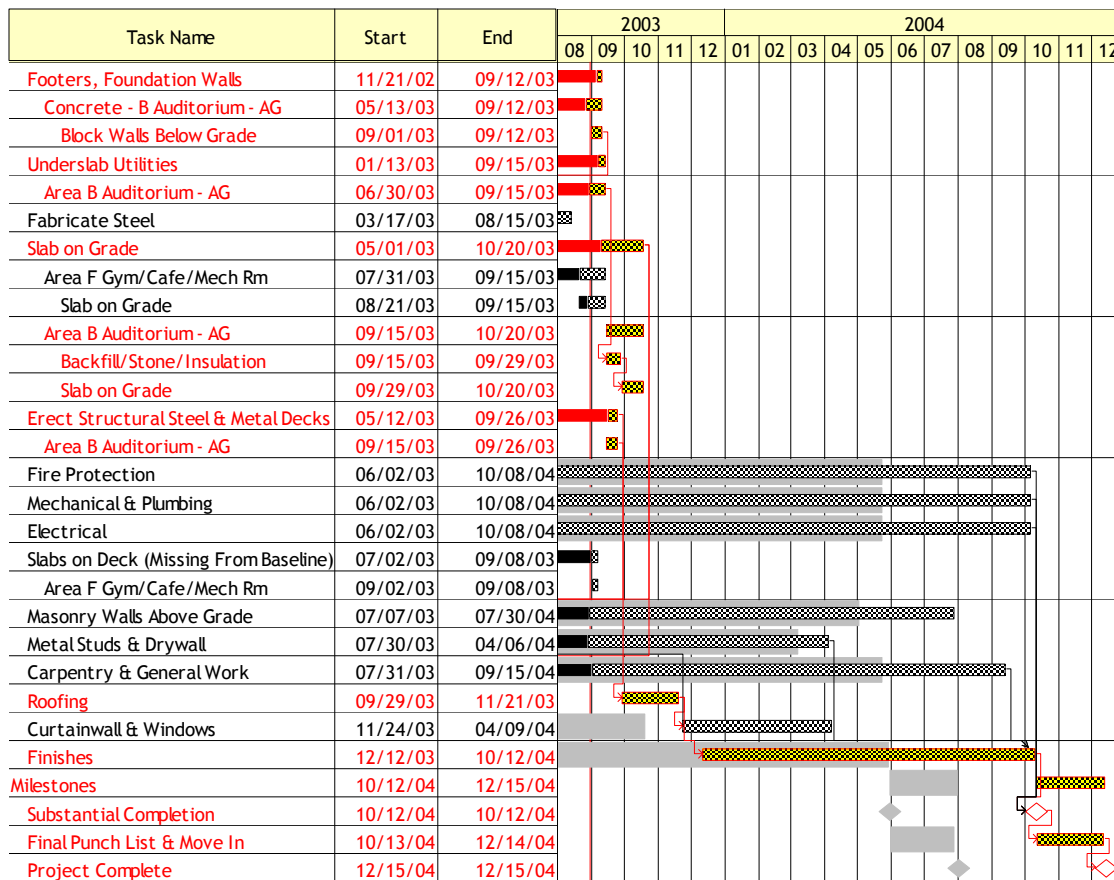
That EDiS' schedule dated August 26th, 2003 report references an August 2nd 2004 Final Completion, affording no extension, is requiring compressed performance durations in an attempt to ameliorate the poor performance to date by other predecessor contractors, not McDaniels. **Exhibit 124.**

EDiS apparently misplaced critique of McDaniel appears to be founded in their hopes of constructively forcing McDaniel to work future sequences that will ameliorate sizable, mounting delays and complete on or near the planned completion milestone.

That much of McDaniel's work was required to proceed off of rough grade, or metal deck, to facilitate the level of progress to date is a testament to McDaniel's willingness to perform, sadly this cannot be said for a number of predecessor trades.

On August 27th, 2003 the plumbing inspector signs off on underground for Areas F and B. **Exhibit 125.**

The August 2003, Monthly EDiS progress report (**Exhibit 126**) notes, nine months to the schedule project substantial completion, the following progress and future performance dates, which when incorporated in the baseline schedule performance logic, and progress pace by prior contractors, generates the following logic:



What is important to note from this analysis is that, as of this late date, there is no roofing, or curtain wall, underway that is necessary to continue overhead mechanical construction as of this date. Those rough MEP installations that have been accomplished result solely from the various mechanical trades, among them McDaniel, working out of sequence, in less than favorable conditions, willingness to ameliorate prior delays by others, but that work was largely inefficient and piecemeal.

As noted in the August 13th, 2003 EDiS/McCone letter (**Exhibit 127**) the roofer must be prepped to proceed no later than September 5th, 2003. Even if this does transpire there is still a net four month critical delay from the planned roofing commencement in the baseline schedule and ultimately more when the actual roofing performance requires more than four times the planned duration resulting in roofing as late as late June of 2004. Additionally, if the roofing experiences delays, like every prior critical construction component the winter of 2003/2004 could further impede progress and therein enclosed work areas to forward both rough and finish construction.

Finally, the prior EDiS demand that conditioned air be on by August of 2003 appears nonsensical in retrospect given the lack of siding and roofs.

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As of September 2nd 2003 the project meeting (**Exhibit 128**) notes that CTA (Roofers) is scheduled to begin September 10th, 2003. Additionally Building F steel, previously reported as complete, in fact, is ongoing, while building B steel erection has not commenced.

9/2/03 CPM Meeting 25

Concrete

A: Remainder COMPLETE

B: Footers and piers not complete

F: Mechanical/Elect and locker room areas to be poured on 9/4

Structural Steel

F: Started 7/31. Decking on gym and aux gym NOT DONE

B: Erection NOT STARTED

Enterprise Masonry

A: 2nd floor - mostly done.

C: Brick veneer ongoing

D: brick veneer ongoing

Roofing

A, C & D ready for roofing

A: Scheduled to begin 9/10

C: Scheduled to begin 9/10

The September 2003 EDiS Monthly Project Status Report (**Exhibit 129**) references the following progress by building:

Area A 1st floor slab on grade complete

2nd floor masonry walls complete

Interior metal studs started

Penthouse: concrete and masonry complete, HVAC units set

Area C Exterior metal studs and sheathing complete

Interior metal studs nearly complete

Brick veneer 85%

Penthouse: Concrete & masonry complete, HVAC units set

Area D 2nd floor concrete deck complete

Ext studs and sheathing complete

Inst of interior studs ongoing

Penthouse: concrete & masonry complete, HVAC units set

Area E 2nd floor concrete deck complete

Penthouse: concrete & masonry complete, HVAC units set

Area F Stl erect complete

Gym & Aux gym need roof decking

Slab on grade has been placed in Cafeteria; other areas have not been poured.

Area B Underground utilities nearly complete

Footers & piers complete

Stl erection scheduled for mid-Sept.

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During the September 8th, 2003 Building & Grounds Meeting Minutes (**Exhibit 130**) Mr. Weer states:

“The project is moving along well, and the building should be weather-tight soon... Mr. Weer is confident that this building will be ready to open in September.”

Obviously to facilitate a September 2004 occupancy the project schedule cannot accommodate any delay, ten weeks, as reported by EDiS, or otherwise. That we have estimated the revised completion at December 15th, 2004 would indicate a deviation of some four plus months from the planned project completion date of August 2nd, 2004 barring any owner conception that the building will be open in September.

More than the failure of Weer to state, or EDiS to apprise IRSD of the actual impact is the unwillingness of anyone on the EDiS/IRSD team to recognize, and timely administrate mounting delays by requiring improved performance by predecessor contractors or extending the contract performance period. (**Exhibit 131**)

Weer's commentary is a stark contrast to continued, delinquent progress reported only eight days later including during project meeting #26 (**Exhibit 132**) dated September 16th, 2003, including , but not limited to,

9/16/03 CPMM 26

Concrete

F: Mechanical/Elect and Locker Rooms poured 9/4/03

B: Kitchen and Main Gym will be poured next (*Planned completion 4/8/03 - 5+ Months Delay*)

Murphy Steel

F: Erection complete on 9/12/03 (*Planned completion 5/6/03 - 4+ Months Delay*)

B: Will begin 9/22/03 (*Planned completion 4/8/03 - 5+ Months Delay*)

Masonry

A: Walls not yet begun

B: Below-grade CMU complete

F: CMU walls for mechanical/electrical room started

Drywall

E: Ext metal studs and sheathing started

C: Roof Blocking complete

D: Roof blocking ongoing

Roofing

CTA did not attend meeting

CTA started roofing on September 11th, 2003 and will be working in areas

A, C and D (*Planned commencement 5/7/03 - 4+ Months Delay*)

Clearly the next critical step in the progress of the project is the building enclosure, but most notably the roof. As referenced earlier the roofer commenced on the 11th of

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September, but his performance is sporadic as noted in the following McDaniel Daily Report (**Exhibit 133**):

9/27/03 MPH DJR

“Roofer has not been on job all week 9/22 - 9/26/03. Need roof installed on penthouse in Areas C-D-E”

The following is a representation of actual progress as of September 30th, 2003.
(**Exhibit 134**)

9/30/03 CPM Meeting 27

Concrete

B: Scheduled for next week

Steel Erection

B: Started 9/22/03

Roofing

Started 9/10. Will proceed C->A->D->E

CTA not present at meeting

CTA needs to return to the job

Drywall

E: Ext metal studs & sheathing ongoing

C: Roof blocking complete

D: Roof blocking complete

E: Installation of interior studs ongoing

2A: Installation of metal studs on top of CMU walls

Though the roofer did mobilize the site, as of the 11th of September (**Exhibit 135**) it does not appear any roofing has commenced and as noted above, from McDaniel's daily report as of September 27th, 2003, this is impacting penthouse construction as well as actively interfering with interior mechanical construction (protection of installations in place) throughout the project.

Additionally the planned roofing duration of two months will be grossly exceeded over the next nine months, due to among other issues the impact of adverse cold weather, further exacerbating any chance of McDaniel working in a water-tight building, critical for commencing water sensitive interior ductwork, insulation and equipment hang.

Finally, the baseline schedule anticipated commencement of mechanical rough four months prior to the placement of the roof thereby insuring that the majority of initial mechanical installations would be riser construction, carrier, hangars, rough piping and plumbing.

The roofer, like McDaniel, had been initially impacted by the late concrete and steel performance, but unlike McDaniel the roofer could have mobilized well before September 2003, but had chosen not to. The impact to McDaniel is working in an

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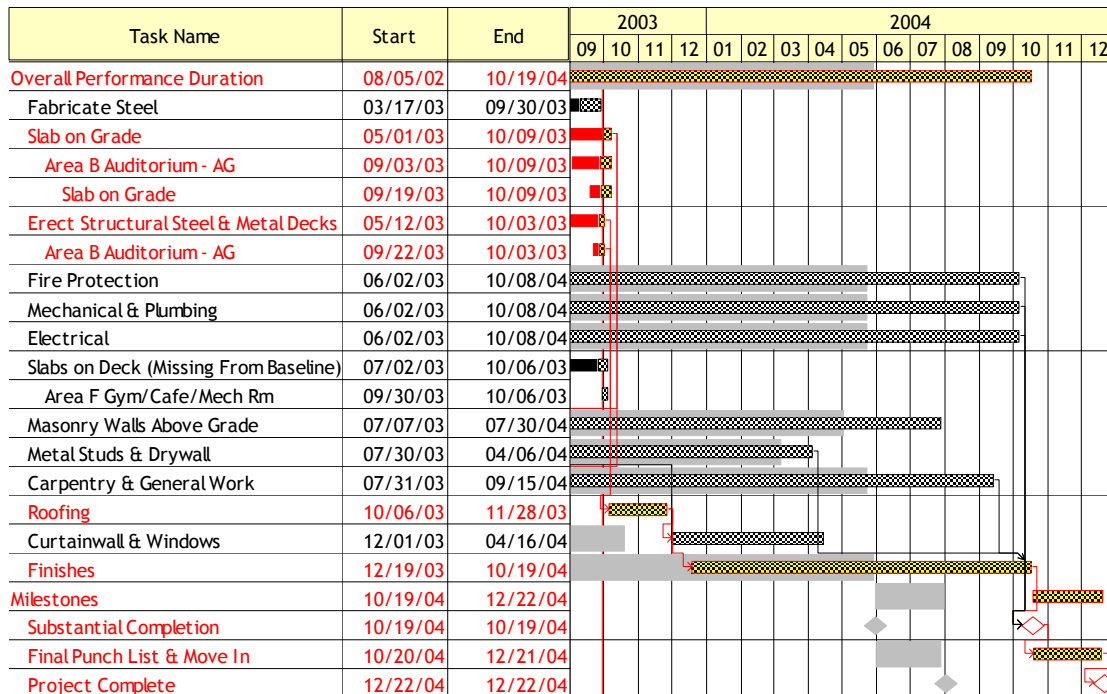
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unprotected building due to an initial four month delays and later an additional seven months of unforeseen and extended performance.

As a result of the roofer's choice not to mobilize effectively the roof is now on the project critical path and the substantial completion date (using a planned overall performance of two months) has now been pushed to the 19th of October 2004, whereas the final completion would fall on the 22nd of December 2004.



Another impact to McDaniel's performance, aside from the lack of a roof, B building slab, and exterior enclosure throughout is the impact of EDiS failure to recognize the full impact of the delay and as a consequence the constructive acceleration, and corresponding chaotic performance engendered by this constructive abandonment of the management and scheduling effort. That impact, and ensuing chaos, as we will see results in out of sequence performance that further interferes with McDaniel contractually stipulated performance durations and sequences. **(Exhibit 136).**

The first sign of the out of sequence performance, in contrast to simply delayed performance is the premature commencement of the mason in the building prior to initially planned mechanical rough install periods. **(Exhibit 137)**

9/29/03 MPH DJR: "Brick layers are putting up block walls in our way."

The October 14th, 2003 project meeting **(Exhibit 138)** references ongoing delays to the completion of building B steel:

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Steel Erection

B: Murphy Steel started B on 9/22/03; However they encountered problems with long spans over the theatre. Murphy will b on site 10/15/03, to continue erection in Area B.

Additionally B Building concrete slabs continue to be in progress, this time in the Music and Art rooms, projected to be placed as of October 14th, 2003.

The final critical impact noted in this October 14th, 2003 meeting is remaining masonry that could impede CTA's roofing progress. To that extent "EDiS requests that Enterprise focus on completing any remaining work on the roof masonry so those areas can be completed by roofers."

Much in the vein of NDK before it, CTA has chosen not to attend prior project meetings, has not re mobilized the site, and is unequivocally delaying roofing in Areas A and E. **(Exhibit 139)**

The McDaniel daily report of October 16th, 2003 **(Exhibit 140)** notes:

"Is there anything or anyone delaying us: YES. Roofer & steel contractors. Also block layers."

10/28/03 CPM Meeting 29

Steel Erection

B: Erection complete, but roof decking is not complete
F: EDIS requested Murphy to complete misc items in F

"EDIS requested Enterprise focus on completing any remaining work on the roofs so those areas can be completed by the roofer."

"EDIS requested Enterprise Masonry complete exterior brick veneer in Areas C and the areas between C, D, E, and A as soon as possible, so these areas can be made watertight."

Roofing: CTA is working in Areas A, F

F Building: CTA will roof over mech, electrical and kitchen areas as soon as parapet Walls are complete.

Based on the aforementioned progress the October 30th, 2003 update of the baseline schedule generates an October 27th, 2004 substantial, and December 31st, 2004 final, completion (MP&H11.TLP). **(Exhibit 141)**.

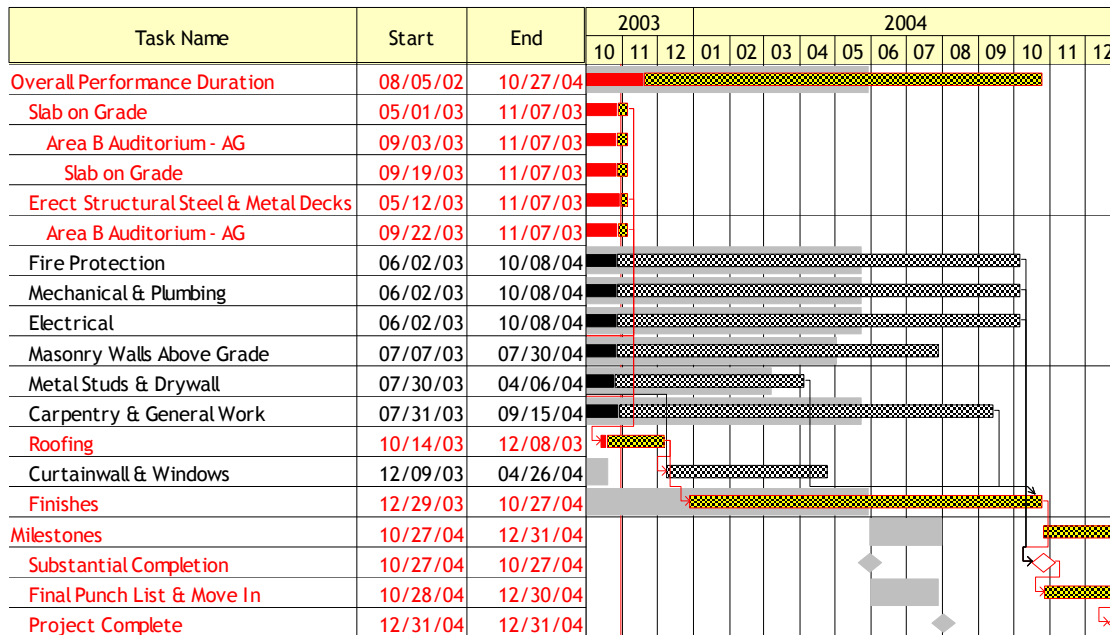
Noting that McDaniel was terminated on October 11th, 2004 with the majority of systems in actual operation there is concern that the continued EDiS mantra of "ten

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weeks delay resulting from weather” is authored to obscure the real magnitude of the delay and those responsible.

Yet another concern is, had the IRSD been apprised by EDiS of the actual delay impact, earlier in the project, they would have better understood McDaniel’s later performance and the reasonableness of the dates being achieved, and therein a termination been averted.



On November 3rd, 2003 McDaniel’s project superintendent, Roger Dill, continues to note the impact of accelerated masonry performance on his efforts to place overhead piping. Per the baseline contract schedule McDaniel should have commenced mechanical & plumbing upon commencement of the first slab pour. **(Exhibit 142).**

Sadly, the mason also started upon completion of the slabs and did not allow McDaniel the planned period of offset (1/15/ - 4/9/03 approx 3 months) thereby actively interfering with McDaniel’s performance resulting in substantive delays and labor overruns:

“Anything or anyone delaying us: Yes - Block layers”
(Exhibit 143)

No matter how hard McDaniel pushes the remaining performance period, they have lost substantive time between the completion of the steel decking (in that they worked off same to forward the project ahead of schedule) and this date.

Activity	Start	End	2003												2004				
			01	02	03	04	05	06	07	08	09	10	11	12	01	02	03	04	05
Slab on Grade	01/15/03	04/08/03																	
Mechanical & Plumbing	01/15/03	05/25/04																	
Erect Structural Steel & Metal Decks	02/26/03	05/06/03																	
Masonry Walls Above Grade	04/09/03	05/04/04																	
Roofing	05/07/03	07/01/03																	

As a consequence of the mason's premature/accelerated commencement the time (originally between January 15th and April 9th, 2003) wherein mechanical could proceed without the imposition of wall construction is lost and cannot be regained. The loss of performance efficiency working around wall for largely vertical overhead installation cannot be understated and clearly further added to the critical delay impact.

This active interference will become more obvious in the coming months as labor overruns resulting from working in and around the constructive acceleration generated by EDiS/IRSD's management (that does not timely recognize equitable extensions in conjunction with prior unforeseen impacted performance). Ultimately these delays, working in unfavorable conditions, working out of sequence will result in the exhaustion of McDaniel's labor resources.

The November 3rd, 2003 meeting minutes (**Exhibit 144**) demonstrate that steel decking and slab on grade placement continue in B building. The EDiS schedule of 9/18/03, referenced a completion of mechanical rough in this final building on November 23rd, 2003.

The project actual performance dates tell us that the first slabs were placed in early June 2003, so for all intent the mechanical rough, per EDiS's request that same be concluded on the 23rd of November, is being required to be complete in six months.

The contract baseline schedule afforded sixteen months for the rough and finish mechanical sequences. Per the September 18th, 2003 schedule update (**Exhibit 145**) the B finishes should complete approximately August 11th, 2004 with mechanical one week prior (Per baseline logic). Therefore the revised performance period, for mechanical overall, from June 9th, 2003 through August 4th, 2004, is fourteen months.

The feasibility of completing the mechanical, even in the reduced duration of fourteen months was highly dependent on the ability to achieve an enclosed structure, including structural steel, masonry, roofing and windows. Delays in any of these work scopes would not forestall the reported start dates, but would impact subsequent start dates in later buildings for the same activities. In summary the roof started in October, five months later than planned, starting in C, then A buildings. Initial progress was good, but as winter progressed the progress deteriorated rapidly generating later and later building enclosures that consequently impacted McDaniel's performance.

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11/3/03 - Monthly Project Status Report for October 2003 - "THE PROJECT REMAINS 10 WEEKS BEHIND SCHEDULE DUE TO SEVERE WEATHER:"

Area A

Interior metal studs & soffits ONGOING
Masonry walls ONGOING
EPDM roofs is installed over the low area above media center

Area C

Interior metal studs COMPLETE
Sprinkler rough-in COMPLETE
VAV installation COMPLETE
EPDM roof over classrooms and penthouse COMPLETE
Window installation STARTED 10/28/03

Area D

Interior metals studs COMPLETE except for duct chase
VAV installation ONGOING
EPDM roof over classrooms and penthouse COMPLETE

Area E

Ext metal studs and sheathing 99% COMPLETE
Interior metal studs COMPLETE except for duct chases

Area F

Ext CMU backup walls 75% COMPLETE
Interior CMU walls along corridor and locker room ONGOING
Mechanical, electrical and sprinkler work has STARTED
Ext metal studs along cafeteria COMPLETE
Mechanical equipment installation BEGUN
Inst of electrical switchgear nearly COMPLETE

Area B

Steel erection COMPLETE
Installation of metal decking is ONGOING
Slabs-on-grade are 40% COMPLETE

(Exhibit 146)

The following excerpts from McDaniel's November Daily Reports **(Exhibit 147)** demonstrate the frustration with not only delays, but the onset of Winter without exterior enclosure to afford working an acclimated environment.

11/4/03 - MPH DJR

"Is there anything or anyone delaying us? YES.

If YES, with whom has this been discussed? Nobody - time is not on my side. NDK said he doesn't have time to wait for me to fix broken pipes underground. Concrete's coming."

11/6/03 - MPH DJR

"Is there anything or anyone delaying us? Block layers: need outside walls. Winter is coming. Also need to clean up job site in all areas."

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11/11/03 - MPH DJR

Delays? "Roofer: need mechanical room, E wing, A wing complete ASAP. Winter is **COMING FAST.**"

11/11/03 - CPMM #30

Concrete - NDK

B: Slab pour cancelled due to rain

Structural Steel

B: Roof decking not complete

Masonry

EDIS: focus on roofs

Roofing

CTA will roof over mechanical, electrical, kitchen as soon as parapet walls ready

CTA will roof area E as soon as Enterprise and NDK are done.

Drywall

F: Blocking on parapet walls must be NLT 11/14/03

NDK needs to complete framing of penthouse F-302

NDK needs to sheath roof framing on F-10 line

11/18/03 - MPH DJR

Delays: "Roofer not on job site. Mechanical room, kitchen & cafeteria, Area E need to be done ASAP."

11/25/03 - MPH DJR

Delays: "Roofer needs to be on the job site **NOW.**"

11/26/03 - MPH DJR

Delay? "Roofing Contractors - BUT they are onsite TODAY."

12/2/03 - MPH DJR

No roofing contractor on site today.

As of November 30th, 2003 concrete in the B Building and subsequent roofing are driving critical performance. **(Exhibit 148)**

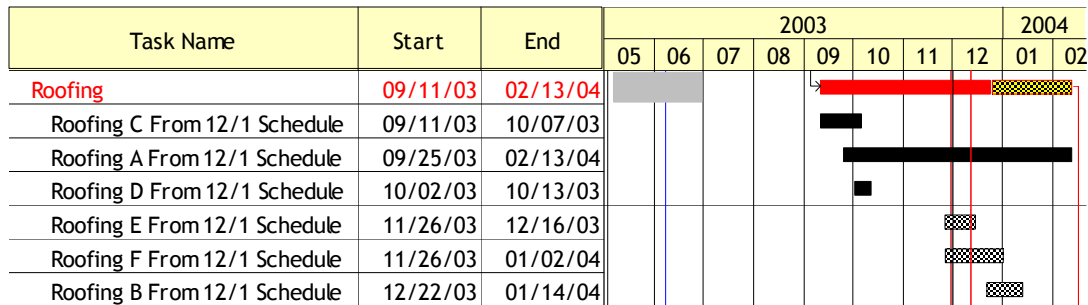
To clarify open roofing issues we have listed roofing status, in each building referenced in the schedule revision of December 1st, 2003, but note that the roof completion reference does not reflect open penthouse roof structures which are forestalling the bulk of mechanical rough and critically impacting McDaniel's performance.

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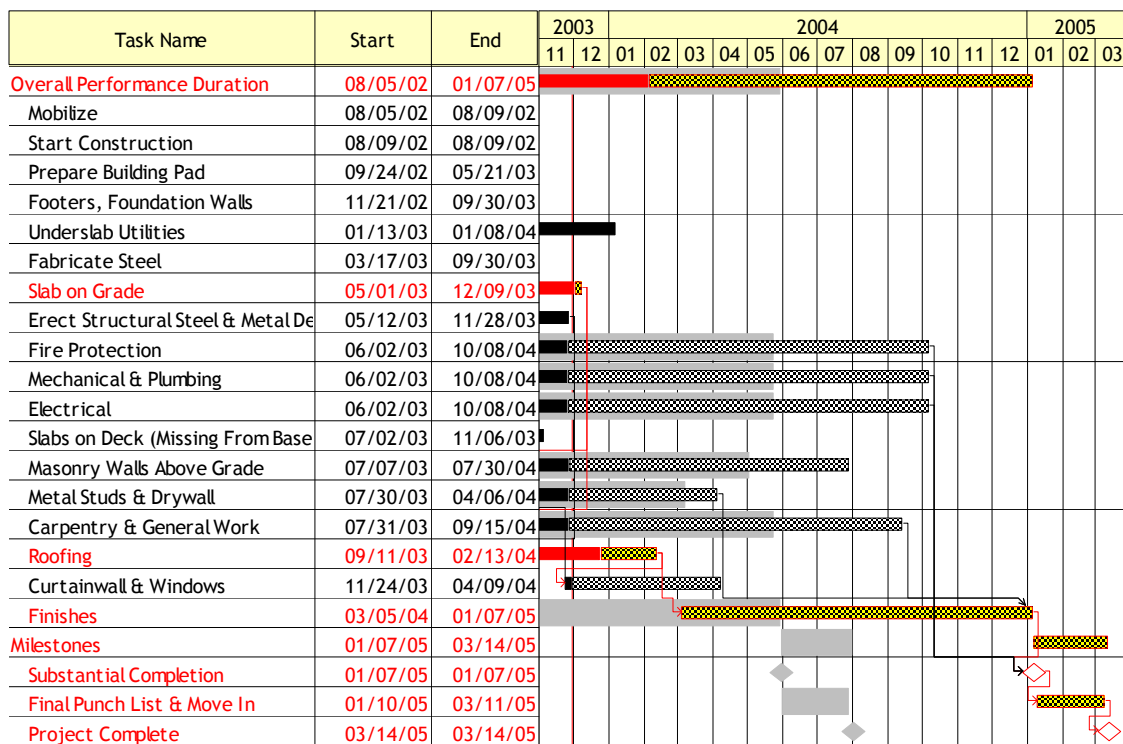
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Though it is likely that finish sequences will start prior to the planned completion of roofing in all areas, plus one month lag, as demonstrated in the baseline schedule, as of November 25th, 2003 no drywall finishing has commenced, and given the lack of an operable heating system, and the onset of Winter weather it appears unlikely that finishes will start prior to early March as noted in the impact schedule. **(Exhibit 149)**

If finishes are not commenced until March 2004, the impacted completion of the project would be January 17th 2005 substantial and March 14th, 2005 final completion, ultimately three and seven months after the date that McDaniel was supposedly terminated for failing to complete.

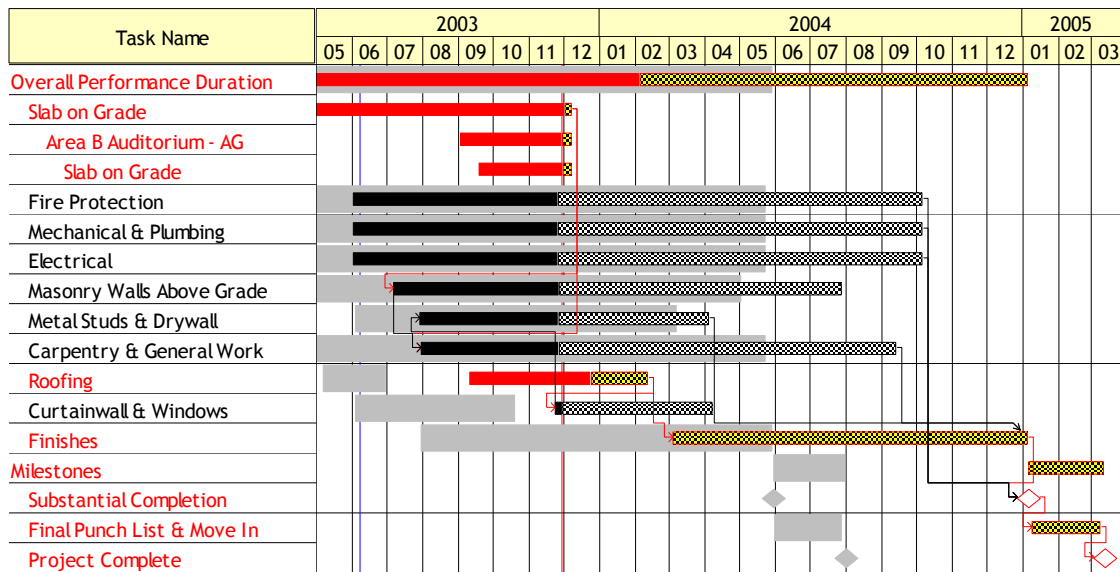


At this point in the narrative one has to question, given

- the failures in site work and building pad preparation, site access and erosion/water control
- the subsequent, defective and delinquent performance by the foundation contractor,
- the delayed commencement and increased durations generated steel and roofing contractors,
- the egregious delays to slabs on grade and deck placement,
- the subsequent, out of sequence, premature installations by the masonry and framing contractors,
- and the failure of EDiS to afford any enclosure or protection to combat late roofing and exterior masonry, in the second, unforeseen open winter

all prior to, or during McDaniel's work scope in all buildings, why an extension, well beyond August 2nd was not obvious to both EDiS and IRSD?

And when the timely extensions were not offered, how does McDaniel ultimately shoulder all of delay criticism/liability with this litany of failed administration?



12/9/03 - CPMM #32

Concrete

Theatre excavation is ongoing, no slabs poured

Masonry

E ext walls

F ext CMU walls

F grouting remaining walls

CMU dam proofing, weather permitting

Roofing

CTA not present at meeting

Drywall

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EDIS: NDK needs to install wood blocking on Area F parapet ASAP
Drywall C & D
(Exhibit 150)

The McDaniel daily reports of 12/15th, 16th, 23rd 2003 **(Exhibit 151)** reference delays by the roofer, while on the 29th through 31st of December 2003 McDaniel sets forth a second recurring theme, accelerated masonry performance:

12/29/03 - MPH DJR
Delay? "Roofers still not on job site". Bricklayers are working on Saturday, (Cannot keep up)

12/30/03 - MPH DJR
Delay? "Roofers & block layers"

12/31/03 - MPH DJR
Delay? "ROOFERS, AGAIN, AGAIN, STILL. Remember this date come AUGUST 4TH!!!"

These disconcerting notices, in conjunction with premature commencement of the masonry, delinquent roofing performance, with little progress to date, imminent winter weather, and the unwillingness of the roofer, CTA, to attend project meetings are the visible aspects of impacts to the project schedule that are interfering with efficient interior rough and finish construction sequences.

Throughout the Winter of 2003-2004, CTA was unable to roof the High School in a timely fashion, and as such critically impacted a number of MPH's activities. **(Exhibit 142)**. MPH's DJRs consistently give notice of the lack of a roof and the profound impact this is having on MPH's progress, specifically as noted in Dill's comment of January 7th:

McDaniel Daily Report Observations

Jan 1: Delay - roofers

Jan 2: Delay - roofers

Jan 5: Delay - roofers

Jan 6: Delay - roofers

Jan 7: "Roofers need to be on site and install their work. We cannot hang VAVs or insulate any piping in E A F B wings at this time."

Jan 8: "Roofer = add 6 months to completion"

Jan 10: "Roofers still not on jobsite. Winter is HERE."

Jan 12: "Roofers still - WHY?"

Feb 5: Project Milestones Reached Today: "Roofers are on job site 2 days in a row."
(Exhibit 153)

The Progress Meeting minutes **(Exhibit 154)** also confirm the delay impact of no roof:

Jane 6 CTA not present at meeting

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CTA must complete E NLT 1/8
 CTA must complete F NLT 1/22
 CTA needs to provide cap flashing on C, D, E ASAP to prevent rain from entering bldg

Jan 20 CTA not present at meeting
 "McDaniel previously stated that the lack of roof in areas A B F and E is holding up ductwork installation."
 CTA must complete F NLT 1/22
 CTA must complete E detail work ASAP

Feb 3 CTA not present at meeting
 C D E cap flashing still not done
 E detail work not done
 F roofing was supposed to be complete 1/22, still not done

Feb 10 A roof 90% complete

Feb 17 CTA not present at meeting
 C D E F cap flashing not done
 F gyms and penthouse still not done

Mar 2 A complete
 F aux gym not done

To develop a better understanding of the status of roofing, in late January we note that C, E and D area roofing has progressed, but flashing is incomplete. (**Exhibit 155**) Area A roofing completed on March 2nd, 2004, but again without flashing (**Exhibit 156**), while F and B are in progress as of that March 2nd, 2004. (**Exhibit 157**).

Given that roofing was to complete July 1st, 2003, and remains substantively incomplete as of March 2nd, (**Exhibit 158**) eight months later, and in that the roofing drives interior finishes the only question, in computing the impact as of March 2nd 2003 is to what extent can initially rough, but more importantly finishes, in any building(s) under roof, commence prior to the completion of all roofing as represented in the contract schedule.

The second concern is, assuming there is a start of finishes prior to the completion of the entire roof structure, how does this further compress performance time already impacted by

- Delayed by concrete foundations
- Out of sequence slab pours to arising from further delinquent progress and the need to coordinate around out of sequence steel erection
- Further impacted by delinquent steel erection,
- Prematurely obstructed/segmented and impacted by premature masonry wall placement

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- Hindered by delinquent enclosure, including roofing
- And now possibly being required to progress previously impacted rough installation concurrent with premature finish construction

(Exhibit 159)

The result of roof delays, and the mounting Winter weather, generated the following report comments:

1/6/04: Concrete

Theatre stage and penthouse B301 slabs NOT POURED

Steel

Murphy not present at meeting

A parapet wall steel NOT DONE

Masonry

B ext walls ongoing AS WEATHER PERMITS

F curtain wall masonry to be complete 1/7

Drywall

NDK must finish A parapet wall ASAP - it's holding up the roof

Drywall going up in C and D

1/8/04

Executive meeting # 24: "Weather has impacted the progress of both projects" ...

"The completion for Sussex Central is August 2004. EDiS reported that due to continued weather impacts, the final completion is currently shown to be mid-September 2004.

The majority of the bldg would be ready, however area B, Theatre, may not be ready."

1/9/04

Delay: Roofer in Area F & B

1/10/04

Delay: "Roofers still not on jobsite. Winter is HERE."

1/12/04

Delay: "Roofers still - WHY?"

1/15/04

Delay: "No". Verbal instructions rec'd:
"Keep my mouth shut and do my job."

1/20/04

Concrete NDK

Still excavating excess material from theatre

Still working towards installing slabs in B theatre and penthouse

Murphy Steel

Not present @ meeting

Still hasn't installed steel on A parapet wall

Misc plates, beams and decking to be installed in B. Waiting on masonry to complete.

Enterprise Masonry

CMU damp proofing on hold due to weather

B ext walls as weather permits

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Enterprise: will work on A and F when weather does not permit work on ext walls.

Enterprise: Should complete supporting wall for A curtain wall by 1/23
Working on curve walls b/w D and E.

CTA Roofing

Not present @ meeting

EDIS: Need cap flashing in C D E

EDIS: Need to complete E detail work ASAP

EDIS: Need to complete roofing in F NLT 1/22

Drywall - NDK

Framing A parapet wall

C complete

D ongoing

EDIS: D must be ready for paint by 1/28

EDIS: E must start by 1/26

Mechanical - McDaniel

"McDaniel previously stated that the lack of roof in areas A B F and E is holding up ductwork installation. EDIS state that ductwork shop drawings for A B and F have not been provided, so ductwork should not be fabricated."

Therefore, at the close of January 2004 McDaniel is giving notice of the impact of not being able to install ductwork and interior HVAC equipment, due to the lack of roofing, in area A, B, E, and F, at that time seven months behind schedule. EDiS's response regarding the approval of duct shop drawings does no discount the efficacy of the delays arising due to the lack of a winter enclosure and their reasonable impact on the contract completion milestone.

As of January 2004, per the baseline schedule, McDaniel would have expended twelve of their contractually total sixteen month performance duration (**Exhibit 160**) and despite this use of 75% of their performance time there still is no tight roof on C, D, E and F, no roof started on B building and the A building roof only recently completed (March 2nd, 2004). (**Exhibit 161**).

Once again, the roof was to complete in all areas as of June 2003, now with seven months eclipsed the roofing remains incomplete. The concern is why EDiS is not notifying the IRSD of these substantive delays arising from concrete, steel erection and roofing performance, but shortly will assert that McDaniel is the sole impact to the project. (**Exhibit 162**).

Despite these sizable roofing completion milestone slippages EDiS notes during the January 20th 2004 project meeting (**Exhibit 163**) that they intend on progressing the drywall, in building D, to allow paint to start on or about January 29th, 2004, a net six

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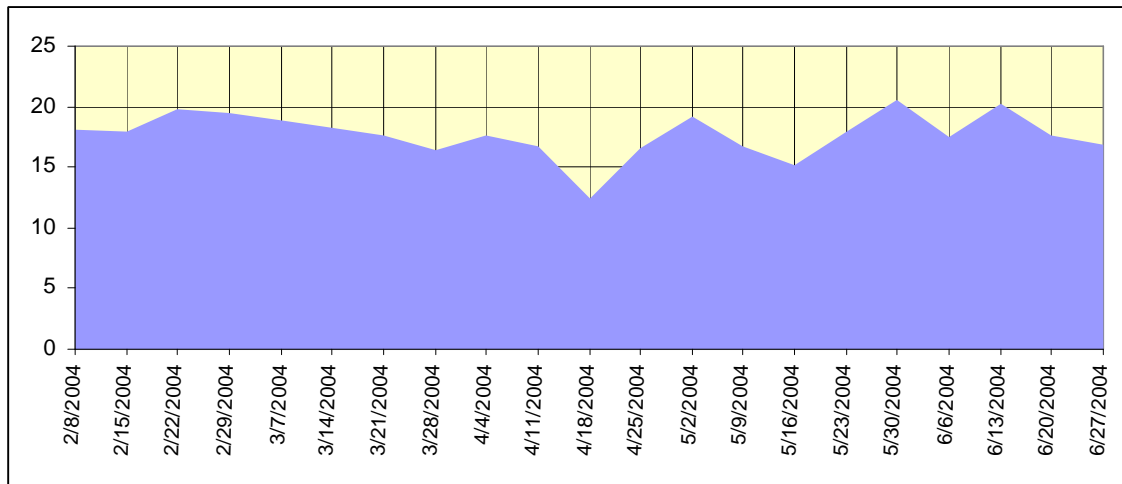
Despite a plethora of information, supporting a substantial completion on November 29th, 2003, and a final completion one month thereafter, on the 9th of February 2004 Weer continues to put forth a date that defies objective analysis. **(Exhibit 166).**

Feb 9	B&GMM	"Mr. Weer shared the progress of the new Sussex Central High School with the committee. Drywall work is complete in Section C and D. Drywall has begun in E. Outside walls are complete on the cafeteria and auditorium sections. Mr. Weer expects this building to open in September."
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The February 10th, 2004 Monthly Status Report notes outstanding roofing, in the A, C, D, and E Buildings while F and B buildings are still under steel erection and concrete placement sequences, all of which continue to delay mechanical installations, especially ductwork, insulation and equipment placement (VAVs). **(Exhibit 167).**

As noted earlier, finishes have commenced as of January 28th, 2004, but only in two buildings, and well ahead of the contractual schedule logic. **(Exhibit 168).**

The net impact of the premature finish sequence in buildings C and D is that McDaniel is being constructively accelerated to keep pace with premature progress in the C & D buildings thereby requiring inordinate resources, not required, or anticipated at the time of bid, to service the impacted schedule. The following plate reflects crew sizing from February 1st through June 27th, 2003. **(Exhibit 169).**



At the same time the prior failed concrete, steel and roofing performance, in conjunction with the premature masonry erection, is depriving McDaniel of the ability to rough in and attempt to ameliorate this constructive acceleration, thereby aggravating the already limited remaining performance window. In each case it should be noted McDaniel accelerated to service the project needs.

Regrettably, in A, D, E, F and B buildings roofing, curtain-wall, exterior masonry sequences, or a combination of any, or all of same, are actively interfering with planned performance and generating a building by building progress strategy. (**Exhibit 170**).

This type of disparate progress, requiring various levels of concurrent, but highly varied installation per location (Versus the contract schedule that set forth similar progress transpiring in all buildings), and generally working under a constructively compressed logic, further impacted McDaniel's performance resulting in labor inefficiencies.

The result can be seen in the February 25th daily report (**Exhibit 171**) where every area of the project is simultaneously undergoing hydronic piping rough.

The February 10th project meeting (**Exhibit 172**) references a twelve week delay to the project asserted by EDiS, but a 90% roof completion and the ongoing window and curtain wall progress reference a date far later for Building A. That the curtain wall was to have completed on October 21st, 2003 and continues, as of February 10th, 2004, in A Building would signal a completion of finishes seven months thereafter (Per the baseline) and then a two month punch, or a revised completion in November 2004.

Area B slabs continue to be delayed ten months after the baseline completion milestone for same.

Feb 10	Monthly Project Status Report	<p>"The overall completion date is 8 Sep 04. The project is 12 weeks behind schedule."</p> <p>AREA A</p> <p>Mechanical, electrical, sprinkler ONGOING</p> <p>1st floor masonry walls 75% complete</p> <p>Curved curtain wall erection nearly complete</p> <p>VAV installation started</p> <p>Elevator is 75% complete</p> <p>EPDM lower roof 90% complete</p> <p>AREA C</p> <p>Piping and ductwork complete</p> <p>Drywall complete</p> <p>Paint 98%</p> <p>Science casework nearly complete</p> <p>Grid ceiling nearly complete</p> <p>Inst of lights & plumbing fixtures ongoing</p> <p>AREA D</p> <p>Mechanical, electrical rough-in complete</p> <p>Drywall complete</p> <p>Paint ongoing</p> <p>Acoustical ceiling begun</p> <p>Light fixtures begun</p>
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		<p>AREA E</p> <p>Mechanical, electrical rough-in nearly complete</p> <p>Brick veneer 90%</p> <p>EPDM complete except for cap flashing</p> <p>Drywall ongoing</p> <p>AREA F</p> <p>Ext CMU backup walls 99% (<i>as they were a month ago - LC</i>)</p> <p>Mechanical, electrical, sprinkler ongoing</p> <p>Installation of mechanical equipment ongoing</p> <p>Interior CMU walls nearly complete</p> <p>EPDM over lockers, kitchen, mech rm and training rm</p> <p>Inst of storefront windows in cafeteria ongoing</p> <p>AREA B</p> <p>Slabs-on-grade 75% complete</p> <p>Ext CMU wall 75%</p> <p>Mechanical rough-in ongoing</p> <p>Theatre slab pour delayed by weather</p>
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The February 17th, 2004 project meeting (**Exhibit 173**) references the impact of acceleration on rough installation. As noted NDK was directed by EDiS to board out ductwork not placed as of February 19th, 2004. The bigger issues was, if you read the NDK planned progress for framing and drywall in section 37.3.9 is that NDK is progressing this scope

Due to delays of eleven months in completion of foundations, eight months in the completion of structural steel, near ten months in the completion of slabs on grade, and twelve months in roofing the framing and drywall is progressing towards a completion two to three months behind schedule by mounting premature and largely concurrent installations that results in acceleration of rough mechanical installations.

Despite the accelerated performance of framing and drywall the meeting also references that the soffits are largely incomplete and have real impact on mechanical rough installation.

Feb 17	CPMM #37	<p>Concrete NDK</p> <p>B theatre stage and penthouse poured 2/13</p> <p>Masonry Enterprise</p> <p>Damp proofing on hold</p> <p>Roofing CTA</p> <p>Not present for meeting</p> <p>Cap flashing still needed for C D E F</p> <p>F complete except for gyms and penthouse</p> <p>Drywall NDK</p> <p>D complete</p> <p>F operable partition not done</p> <p>E ongoing and must be done by 2/23</p>
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		EDiS required NDK to start framing soffits in ceilings in Areas A, C, D, E and F so other trades can proceed with their work. This work has not proceeded “NDK asked about the ductwork still remaining to be installed in the chase. EDIS directed NDK to close the duct chase on 2/19/04 if this duct is not yet installed.” Penthouses A C D E complete
Feb 25	PTIR	A 2 nd Flr, Media Center A-200 Type L copper pipe. B Wing - Section 15181 - Hydronic piping. C Wing 1 st Flr - Hydronic piping C Wing 2 nd Flr - Hydronic piping D Wing 1 st Flr - Hydronic piping D Wing 2 nd Flr - Hydronic piping E Wing 1 st Flr - Hydronic piping E Wing 2 nd Flr - Hydronic piping F Wing - Hydronic piping

The March 2nd, 2004 report notes the ongoing completion of exterior masonry and curtain wall in buildings B, D, E and A. (**Exhibit 174**).

Additionally, incomplete roof systems in every building, and no roof at all in B is waylating EDiS's effort to accelerate drywall to the extent where albeit the effort started months earlier, only E building has made any significant progress, and as noted construction of soffits is outstanding throughout.

Mar 2	CPMM 38	Sitework Croll “On 1/20/04 EDIS requested AP Croll to provide a date when they will make the final connection of the force main to the Georgetown treatment plant.” Concrete NDK Excavating theatre Forming locker bases in girls' locker room Steel Murphy Not present @ meeting Needs to complete B punch list Masonry Enterprise B ext walls D->E curvewall as weather permits. EDIS says hurry up A 1 st floor south complete, now working on north side EDIS: complete E ext walls so we can complete windows and cap flashing Needs to cut holes for valve boxes in E stairwells. Roofing - CTA C D E F cap flashing not done A roof complete F roof complete except Aux Gym Drywall - NDK Needs to frame A operable partition
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		E complete EDIS: Penthouses - be ready to install blocking as soon as panels arrive. EDIS: Start framing A C D E F ceiling soffits so other trades can proceed. Hanging drywall at top of walls in A and F EDIS: Start CMU wood blocking in B
Mar 8	B&GMM	“All of the mechanical work is complete in A section...Mr. Weer expects the building to be ready to open in September.” (Exhibit 175).

Despite a premature start in July of 2003, and a planned completion of masonry May 2004, two months hence (Per project meeting 39 attached schedule **(Exhibit 176)**), as of mid March Buildings B, D and E exterior masonry remain ongoing.

During the same meeting the roofer, CTA, once again is not in attendance, but has made progress from the prior meeting by the recent completion the auxiliary gym (F Building). EDiS then notes that the theatre needs to start no later than March 22nd, 2004.

Referencing the baseline schedule the roof was to have been completed on all structures as of July 1st, 2003, whereas A building was completed as of the March 2nd, 2004 project meeting, F Building as of the March 16th, 2004 meeting **(Exhibit 177)**. and now EDiS expects the final area complete of as March 22nd, 2004. Clearly, even if this milestone is achieved the pace is slightly under nine months behind schedule.

Per the baseline schedule logic the finishes do not commence until approximately one month after the roof is complete. That the final roof will likely not complete in March, and given that the finishes commence in January, this premature (a minimum of three months) start of finishes is accelerating the project schedule.

Additionally EDiS noted that soffit construction has begun in C, D, E and F with only E C Building boarded and finished (Apparently aside form soffit structures.)

Mar 16	CPMM 39	Concrete - NDK Little movement - first pour done on theatre Steel - Murphy No movement. B roof cannot be complete until Murphy installs their closure pieces. Masonry - Enterprise Little movement B ext ongoing D-E curved wall ongoing A North complete EDIS: Gotta complete E ext walls
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		Roofing - CTA Not present, no progress Drywall - NDK “A” operable partition need to be framed EDIS: Gotta start wood blocking the penthouses EDIS: Gotta start on A C D E F soffits Carpentry - Briggs Metal wall panels for penthouses A C D E F arrived 3/2
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As of March 30th, 2004, five weeks prior to the planned completion of masonry, exterior masonry work continues in buildings B, D and E continuing to deny an enclosed structure. **(Exhibit 178).**

The exterior masonry throughout the various buildings should have been one the first areas to progressed to avoid Winter impacts that have belabored McDaniel's performance, while the meeting also notes continued incomplete roofing.

That combination of delinquent roofing and premature, albeit delinquent, masonry conspired to force McDaniel rough installations into the depths of Winter without heat or protection thereby forestalling duct, equipment and insulation efforts.

Another item from the March 30th meeting it is notes that the B building slab pour will be complete April 7th, 2004. EDiS notes that this pour is necessary to allow contractor work in the theatre ceiling. Give that the slabs were to have been complete on April 8th, 2003, 364 days prior, this would intimate a substantive impact to the baseline schedule logic.

Finally, as of March 30th, 2004 meeting EDiS notes that Enterprise has completed the exterior masonry at B and has commenced interior installation, while the remaining E Building exterior walls are to be complete within the week. **(Exhibit 179).**

Clearly the premature commencement of masonry walls, immediately after slabs on grade, and in the case of B Building prior to slab on grade, have allowed masonry to recoup much of their performance time, but largely at the expense of the contractors, such as McDaniel, who they actively interfered with as a result of their premature and accelerated performance.

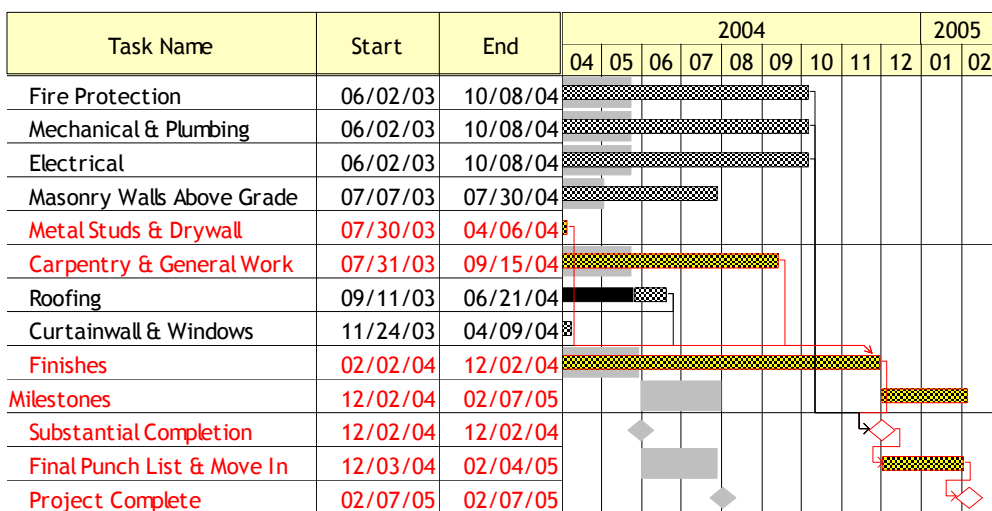
Two weeks thereafter, on April 13th, 2004, the masonry continues in B, E and F **(Exhibit 180)**, yet despite these delays, and the initial four month encroachment of premature masonry installation, McDaniel is keeping pace with overhead inspection and punch in the C, D and E buildings, but at substantial cost as noted in the project overrun, wherein McDaniel nearly doubled their labor expenditures to complete the majority of the project scope.

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In fact, despite inordinate prior impacts by a wide group of contractors EDiS will continue to assert a twelve week impact, arising from weather. (**Exhibit 181**).

Ultimately interior masonry walls complete in July, in B building, largely discounting any contractor's chance of substantially completing the project as of May 31st, 2004. That the roof in B Building wasn't complete until June 2004 (**Exhibit 182**) also had an additional dilatory impact, but the key initial impact of the theatre slab on grade not starting until March 2004, fifteen months behind schedule, not McDaniel's perceived failings, as asserted by EDiS, generated this abysmal progress pace. The following plate reflects the baseline logic and durations with progress input as of April 2004:



Clearly the project critical path is being driven by the baseline duration afforded for finishes and subsequent punch list and move in using baseline durations starting in February 2004.

The schedule reporting technique, utilized by EDiS to date has generated bar charts that were not CPM reflections of progress, and generally erred on the side of discounting, or obfuscating, mounting delays. This inaccurate and largely optimistic reporting of schedule impact was regularly afforded to the IRSD.

That McDaniel will ultimately become the target, for delays to the project in May through August 2004, is due to the failure to apprise the owner of the mounting impacts, prior to McDaniel's critical performance, and the placement of the mechanical scope at the end of the project schedule in conjunction with the inability of repeated EDiS update schedule's prior, constructive logic compressions to ameliorate the lapsed performance.

Mar 30	CPMM 40	Steel - Murphy B is now mostly complete
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		Masonry - Enterprise B ext CMU complete B interior walls ongoing D-E curved wall complete E ext walls ongoing Roofing - CTA Not present @ meeting Not done: cap flashing C D E F Complete: C D (?)
Apr 2	EDIS	Above ceiling inspection
Apr 2	Memo A&S > EDIS	Area E Above Ceiling inspection
Apr 2	Memo A&S > EDIS	Area C Above Ceiling Re inspection 3/31/04
Apr 2	Memo A&S > EDIS	Area D Above Ceiling Inspection
Apr 5	EDIS > All Contractors	1C Above Ceiling Punchlist
Apr 13	CPMM 41	Masonry - Enterprise B ext CMU complete B interior walls ongoing E ext walls ongoing F brick veneer ongoing Roofing - CTA Not present @ meeting Not done: cap flashing C E F Not done: roof over entrance b/w gym and weight room Not done: roofing and gravel stop over penthouses Complete: C D (?)

(Exhibit 183)

As of the April 27th project meeting **(Exhibit 184)** Building B interior walls remain ongoing while roofing remaining issues are still not addressed in the majority of buildings.

Apr 27	CPMM 42	Masonry - Enterprise B interior walls ongoing E ext walls complete Roofing - CTA Not present @ meeting Not done: cap flashing C E F Not done: roof over entrance b/w gym and weight room Not done: roofing and gravel stop over penthouses ASAP: Roofing in Area B ASAP: Roof over penthouse B301 Complete: C D (?)
May 3	EDIS > MPH	Partial Withholding of Payment Application #19

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May 10	MPH > EDIS	Sussex Central High School Delay Issues
May 12	Monthly Project Status Report	<p>"The project is 14 weeks behind schedule."</p> <p>AREA A</p> <p>Mechanical, electrical ongoing</p> <p>Started: brick veneer</p> <p>Complete: Elevator</p> <p>Started: 2nd floor paint</p> <p>Complete: Paint of lobby</p> <p>Complete: Framing of admin area</p> <p>Ongoing: Drywall</p> <p>Started: Framing of shed roof over admin area</p> <p>Complete: Epoxy floors in bathrooms</p> <p>AREA C</p> <p>Complete: paint</p> <p>Complete: plastic casework</p> <p>Ongoing: technology installation</p> <p>Ongoing: cap flashing parapet</p> <p>Complete: installation of boards, computers</p> <p>Ongoing: VCT flooring, doors & hardware</p> <p>AREA D</p> <p>Complete: painting interior, plastic casework, cap flashing on parapet, metal wall panels in penthouse, marker board, workstations</p> <p>Ongoing: Doors & hardware</p> <p>AREA E</p> <p>Complete: Brick veneer, paint, casework, workstations, boards</p> <p>Ongoing: Doors & hardware</p> <p>AREA F</p> <p>Complete: paint in weight room, locker rooms, kitchen; pouring of concrete locker bases; kitchen hood; piping of chiller; epoxy floors in locker room bathrooms.</p> <p>Almost complete: mech & electrical; inst of mech rm eqpt</p> <p>Ongoing: paint in main gym</p> <p>AREA B</p> <p>Complete: slabs-on-grade; elevated slabs-on-grade; interior CMU in theatre; ext metal wall studs and sheathing; theater roof</p> <p>Ongoing: CMU wall except theater; mech, electrical, sprinkler rough-in; brick veneer</p> <p>Begun: roofing over classrooms</p>
May 11	CPMM 43	<p>Enterprise</p> <p>Is proceeding with interior walls in B, and brick veneer in A and B</p> <p>Roofing - CTA</p> <p>Not present @ meeting</p> <p>Not done: cap flashing C E F</p> <p>Not done: gravel stop over penthouses</p> <p>ASAP: Roofing in Area B</p>

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		ASAP: Roof over penthouse B301
May 13	Exec Mtg Minutes 28	Still on schedule for Aug 04 move-in

(Exhibit 185)

As to the prior issue of EDiS reporting, as of May 13th, 2004 IRSD appears to be under the belief that there have been no impacts to the schedule that would forestall the final completion beyond August. **(Exhibit 186).**

The second item of note is the May 17th, 2004 walk through of the mechanical penthouses, by Allen & Shariff, wherein they compliment the work being installed by McDaniel. **(Exhibit 187).** These comments regarding what later is an area that is removed from McDaniel's contract due to among other issues supposedly inferior installation appear contradictory.

Note that the same outstanding thermostat, valve, gauge and flow meter installations are ultimately a part of the basis for removal of McDaniel from this area, but the early inclusion of these items and their status demonstrate that they could, in fact, be installed later in the project without adverse impact.

May 17	A&S > EDiS	Mechanical Room Preliminary Piping Inspection, Penthouse D Preliminary Piping Inspection. "Much work still needs to be done, and details such as thermometers, pressure gauges, vents, flow meter fittings, etc., still need to be installed. But McDaniel's crew is doing a nice job in the Mechanical. Room and we assume will continue to do so until completion. "
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Jun 7	EDiS > MPH	Penthouse Piping Inspection
Jun 7	B&GMM	No mention of any delays. "Mr. Weer plans to have the administration area operational in early August."
Jun 14	MPH > EDiS	Request for meeting to discuss issues re starting up air conditioners
Jun 14	MPH > EDiS	Things other contractors have to do for MPH to complete work on chiller and AHU's

(Exhibit 188)

On June 21st, 2004, little more than a month prior to the original project substantial completion date, EDiS notes that the project was four months, or sixteen weeks, behind schedule noting that the theater will be complete on or about the middle of October 2004. **(Exhibit 189).**

The B Building progress continues to be largely hindered by the lack of a complete roof structure only just completed as of June 21st, 2004.

Also noted in the meeting, concurrent interior and exterior masonry and MEP rough are progressing in B. That the baseline progress schedule referenced the masonry walls complete ten months after the completion of roofing demonstrates how late the roofing really is, and how accelerated the masonry performance has become to close and ultimately discount the roofing masonry gap. The concern is that masonry performance, so far ahead of scheduled logic, results in the compression of the available MEP rough and finish performance durations in later buildings.

Jun 21	Monthly Project Status Report	<p>“Areas C, D, E and F remain on schedule. Completion date for Area A has been adjusted to have the area completed by the end of July. Area B is behind schedule. The VO/AG and shops areas are expected to be complete by the end of September. The theater will be complete by the middle of October.”</p> <p>“The overall project is 16 weeks behind schedule.”</p> <p>AREA A Ongoing: Mechanical, electrical; interior brick veneer @ entrance; 2nd floor paint; drywall.</p> <p>AREA C Complete: tech install; VCT floors in classrooms; classroom doors and hardware, ceiling tiles Ongoing: parapet cap flashing</p> <p>AREA D Complete: classroom doors & hardware; classroom VCT floors; technology; ceiling tiles Locker installation ongoing VAVs and AHU online</p> <p>AREA E Complete: classroom doors, hardware, flooring; ceiling tiles Ongoing: locker installation, technology</p> <p>AREA F Complete: Mechanical room equipment installation; paint in gym, aux gym and cafeteria; installation of kitchen and gym equipment Started: gym wood floor; chiller</p> <p>AREA B Complete: classroom roofing Ongoing: Interior CMU; mechanical, electrical, sprinkler rough-in; ext brick veneer; metal wall panels</p>
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(Exhibit 190)

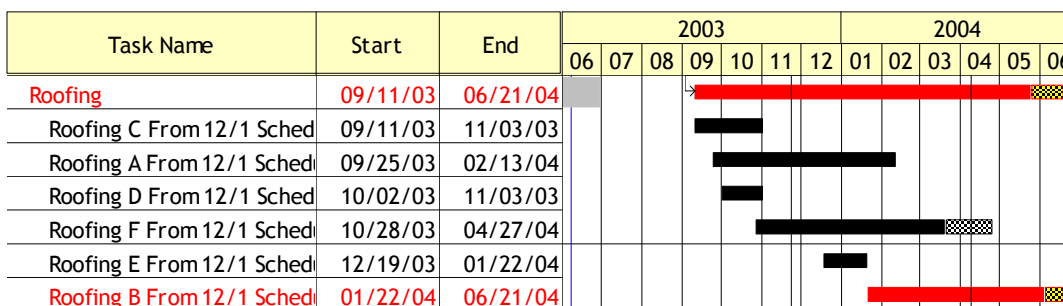
Roofing and B Building Delays

As previously noted the aforementioned job meeting notes the completion of the B Building roof, but more importantly is the overall progress milestone achievements for this structure and roofing performance overall given EDiS's daily rebuke of McDaniel for supposedly driving the delay impacts. (Exhibit 191)

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The CTA roofing performance was seriously late and the unwillingness to attend project meetings (**Exhibit 192**), evidently allowed by EDiS, further exacerbated CTA's non performance. A comparison of their actual performance achievement demonstrates delays to critical performance late in the project, and especially McDaniel's ability to progress interior construction:



With McDaniel being admonished daily for their supposed role in delaying the contract, the B building is a prime example of delinquent work by a varied group of those contractors that in fact delayed prior performance and placed McDaniel, and ultimately the project, in this delinquent state as of June of 2004, approximately two months prior to planned substantial completion. The following performance monitoring, from a number of project meetings, outlines the failed concrete slab, masonry interior and exterior wall and roofing impact that affords a complete building shell on the 6th of July 2006.

Theatre Stage Slab	2/10: 0%	3/16: "Started"	
Ext Walls	2/10: 75%	3/1: 80%	4/13 100%
Interior Walls	3/1: "Started"	4/13: "Ongoing"	5/12: "Ongoing"
	7/6: "Ongoing"		
Slab-on-grade	1/8: 75%	2/10: 75%	3/1: 85%
	5/12: 100%		
Penthouse Equipment	3/1: Installed		
Roof	3/16: 0%	5/12: "Started"	6/21: Complete

Jun 28	A&S > EDIS	Area A Above-Ceiling Inspection on 6/25/2004
Jun 29	EDIS > MPH	Area A & F Above Ceiling Inspections
Jul 06	EDIS > MPH	Area C Above Ceiling Re-Inspection
Jul 06	CPMM 47	Masonry - Enterprise Ongoing: B Interior walls Roofing - CTA Ongoing: Cap Flashing C E F A Ongoing: Gravel stop penthouses C A F B Drywall - NDK Outstanding: A ceiling and soffits Ongoing: B Framing

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		Ongoing: C D E punch list
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(Exhibit 193)

As noted earlier, and in the July 12th building and grounds report **(Exhibit 194)**, once the roofing was complete in the B building, in June of 2004, some eleven months behind schedule, McDaniel is immediately represented as the sole delay impact with no reference to delayed site work, concrete, steel, or roofing construction.

With the recent completion of the B Building roof, masonry performance is still driving this building, and on the 20th of July EDiS notes the contract is 18 months behind schedule. **(Exhibit 195).**

By July 20th 2004 meeting little more than a week to the original contract completion and near two months beyond the substantial completion, and mechanical is under pressure to work all areas simultaneously, contrary to the baseline schedule logic.

EDiS notes the contract is eighteen weeks behind the schedule, resulting in a substantial completion in mid October 2004, and a final completion in mid December.

Jul 20	Monthly Project Status Report	SCHEDULE REPORT "Areas C D E and F remain on schedule...B is behind schedule. The Mechanical Contractor has been advised that they must focus on the completion of work in the other areas of the building. We are still concerned about the Mechanical Contractors ability to complete the work in all other areas and still be able to work in area B. The overall project is 18 weeks behind schedule."
Jul 24	EDIS > MPH	Areas A & F Above Ceiling Plumbing Follow-Up Inspection
Jul 27	RLI > EDIS	Release no further funds on this contract w/o our OK
Jul 27	CPMM 50	Masonry - Enterprise Ongoing: B interior walls Roofing - CTA Ongoing: Cap Flashing C E F A Ongoing: Gravel stop penthouses C A F B Drywall - NDK Ongoing: B Framing Ongoing: C D E punch list
Aug 2	EDIS > MPH	Areas C D E final punch lists

(Exhibit 196)

In August punch list processing continues, while on the 9th of August, during the building and grounds meeting **(Exhibit 197)**, it is noted that the advanced state of the HVAC systems ("The HVAC system is operational"), despite significant prior delays to

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the project. Yet Dwyer of EDiS continues to assert to the IRSD that McDaniel has caused the progress to fall behind schedule.

What is of value in Dwyer's comments is that McDaniel is bringing conditioned air systems on line and they will in fact be operational prior to the commencement of school, confirmed by the fact that school does open despite delays ranging up to twelve months (Concrete Slab Placement).

With such sizable delays prior to McDaniel's rough and finish sequences and ultimately McDaniel bringing the key aspects of the system on line in time to mitigate much of these critical impacts, what was the basis of termination?

Croll, NDK, Murphy and CTA ultimately delayed the project for months in their performance of each of their respective scopes, yet none were made to reclaim their schedule dates. **(Exhibit 198).**

As for masonry, Enterprise largely held their performance durations, albeit offset three months by delay, but only by prematurely starting installations to the disadvantage of McDaniel and in conflict with the schedule. As a result of these prior, critical contractor's efforts, or lack of same, ultimately McDaniel worked to egregiously impacted rough performance duration, and truncated finishes duration to bring the system on line, for the benefit of the finish contractors and the building occupants, only to later be terminated.

Aug 9	B&GMM	"The HVAC system is operational, and the automatic temperature control system is being installed throughout the building. Mr. Ted Dwyer of EDiS explained how the mechanical contractor has caused the progress of the building to fall behind schedule. He also assured the committee that the majority of the building will be usable when the school year begins."
Aug 11	EDIS > MPH	Boiler inspections and Certifications
Aug 18	Monthly Project Status Report - July	<p>AREA A</p> <p>Complete</p> <p>Mechanical & electrical</p> <p>Ceiling grid and tile</p> <p>Doors & hardware</p> <p>Ongoing</p> <p>Flooring around admin area</p> <p>Setup of headed room</p> <p>Toilet partitions and accessories</p> <p>Fire alarm system online and admin area occupied</p> <p>AREA C</p> <p>Punch list</p> <p>Locker room installation</p> <p>AREA D</p> <p>Ongoing: punch list, locker install, corridor VCT</p>

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		<p>AREA E Ongoing: classroom punch list, corridor VCT, locker install</p> <p>AREA F Ongoing: paint lines on gym floor Lockers complete Bleacher install complete Domestic water heater online</p> <p>AREA B Nearly complete: piping & insult in Art/Music/JROTC Ongoing: mech, electrical, sprinkler Complete: Interior CMU Complete: curtain wall, storefront Nearly complete: windows Complete: framing, drywall of Art/Music/JROTC Started: Theatrical rigging</p> <p>SCHEDULE REPORT "Area B is behind schedule. The Mechanical Contractor has been advised that they must focus on the completion of work in other areas of the building. We are still concerned about the Mechanical Contractors ability to complete the work in all other areas and still be able to work in Area B. Even though other contractors are making progress in area B, we expect that the music, choral, art and JROTC rooms may not be complete until the middle of October."</p> <p>The overall project is 18 weeks behind schedule."</p>
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(Exhibit 199)

This most recent observation by Dwyer that McDaniel is responsible for delays that, now amounting to eighteen weeks, conflicts with the prior status afforded by EDiS.

Specifically, at the start of 2004, the overall project was supposedly 12 months behind schedule by EDiS' analysis and wholly due to weather per the monthly progress report of December 2003. **(Exhibit 200).**

This fact is echoed in the School Board's Executive Committee meeting, held at the same time, wherein EDiS stipulated that weather had impacted the project. No other problems or delays are mentioned, and there is no indication of any problems with any other contractors.

This general view of performance holds for the first six months of 2004. In the Executive Committee Meetings, the Buildings & Grounds Committee Meetings and the Monthly Project Status Reports wherein EDiS re affirms that the project is on schedule.

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And despite the catastrophe that is B Wing, and CTA's inability to keep the rain out of the buildings per the baseline schedule dates, and the fact that the project overall is 12 - 16 weeks late, McDaniel keeps up a steady drumbeat of progress.

An example is the March 16th 2004 Progress Meeting (**Exhibit 201**) which lists McDaniel as completing all insulation in E, completing the concrete pad in the mechanical yard, completing setting the return fans in A, B, C and D penthouses, completing exposed round duct in A, setting Girds in C and D, and ongoing work in the boiler room with no reference to progress failings.

If only to re affirm McDaniel's progress as of May 2004, on May 17th Allen and Sheriff stated to EDIS:

"Much work still needs to be done, and details such as thermometers, pressure gauges, vents, flow meter fittings, etc., still need to be installed. But McDaniel's crew is doing a nice job in the Mechanical. Room and we assume will continue to do so until completion." (**Exhibit 202**).

The initial hint of trouble comes in the May 25th 2004 Progress Meeting where EDIS expresses its concern that McDaniel cannot get all its work done in time for school opening. (**Exhibit 203**).

Yet the same minutes show McDaniel steadily progressing through its list: valves and controls for gas control panels are complete, as is the aluminum duct in the bathrooms and the chiller piping.

Additionally, despite prior unilateral EDiS acknowledgment of between twelve and eighteen months of delay (By impacts other than McDaniel) EDiS' concern is predicated on the original August date. In essence EDiS is not recognizing the delays that it has cited have occurred in their analysis of impact.

In early June McDaniel keeps moving to completing critical performance milestones, including the piping of the boiler room, D and E building AHU's on June 8th, and completing the piping of A and C penthouses on June 22nd. Though these areas will come under later review for alternate piping and duct layout, they are in fact in operation and afford the school a certificate of occupancy well before the appropriate impacted completion date. (**Exhibit 204**).

The June 21st 2004 Monthly Project Status Report reports that project performance is still on course, although the overall project delay has grown from 12 to 16 weeks. (**Exhibit 205**).

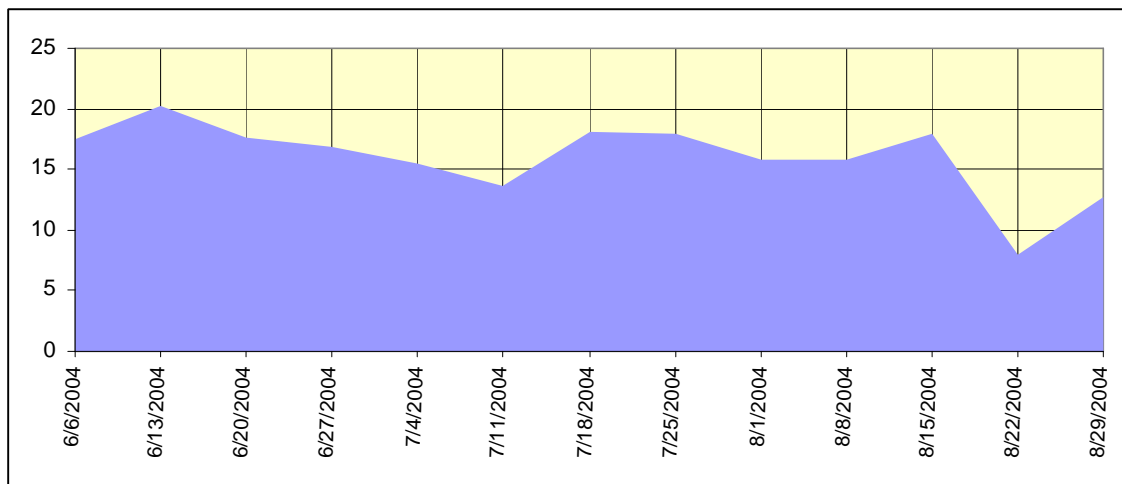
At the beginning of July, McDaniel brings the A, C, D, and E AHUs online (July 6th, 2004 progress meeting # 47). (**Exhibit 206**).

When concerns about McDaniel finally appear outside the Progress Meetings, they are related to the B wing. The July 12th Buildings & Grounds Meeting (**Exhibit 207**) says that "progress has slowed in B wing due to problems with the mechanical contractor." Dwyer's concern is that McDaniel cannot progress the belated B Building and keep progress on the remainder of areas (EDiS report 8/18/04). (**Exhibit 208**).

In fact, up till July of 2004, the outline that EDiS is reporting to the IRSD is that the project has been delayed 12 - 16 months because of weather delays, but this is to be expected due to experienced conditions.

As a result of these impact EDiS notes that the school will open, with the possible exception of B Wing, which is a problem since that is the wing that contains the gym and the cafeteria. But up until July, there's no mention of any problem with McDaniel, while the above captioned August 18th, 2004 meeting notes that McDaniel is in the punch stages in buildings A, C, D and E with F and B ongoing. Clearly the reported delays in B excuse McDaniel from this belabored buildings failure and F is well on the way to punch.

It is imperative to note that the biweekly construction progress meetings approach remaining work in greater detail. (**Exhibit 209**). Here the impact of initial delays and subsequent accelerated/compressed performance, on McDaniel's progress, are more apparent, clearly referencing that McDaniel is struggling in their attempt to complete all mechanical per the un impacted performance dates, especially at the penthouses, given the unwillingness to extend the schedule the aforementioned sixteen weeks (September 30th, 2004 substantial, November 30th, 2004 final at a minimum) noted by EDiS. But it's also clear, from these meetings, that McDaniel is making steady progress throughout the buildings. Throughout this period McDaniel's crew size remains constant at 15 - 20 men. (**Exhibit 210**).



In July 2004, relationships start to deteriorate between McDaniel and the management team. At the beginning of the month, McDaniel's name starts appearing in the Building & Grounds and the Monthly Project Status Report, but only mentioned as a delay to the completion of B Building - and there is no mention of the penthouse concerns, as there is no recognition of the aforementioned 12-16 weeks delay and corresponding equitable extension. **(Exhibit 211).**

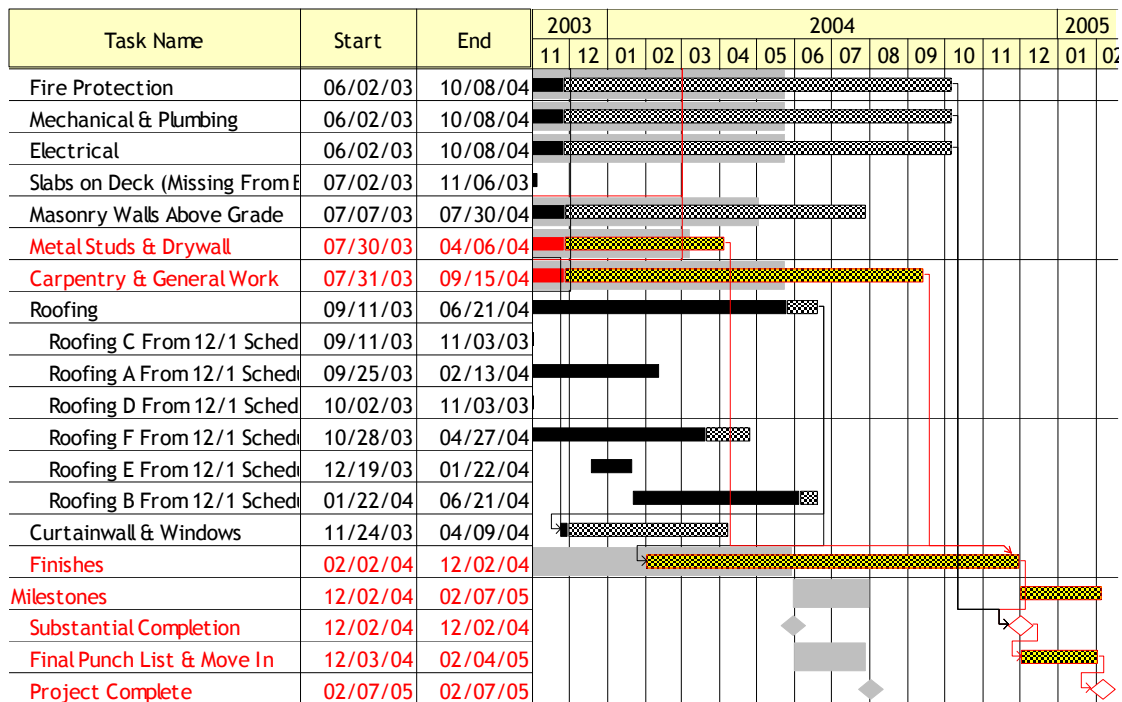
In fact, McDaniel has brought the majority of the AHU's online at the beginning of July 2004 **(Exhibit 212)** and making steady progress on punch lists in various buildings while vastly improving on production dates generated by PCM's schedule impact analysis that would have the project final completion in February rather than EDiS attempt for August for all except the B Building.

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A key turning point in the relationship between McDaniel and EDiS occurs on July 27th when RLI, McDaniel's surety, informs the IRSD that they should not issue any further monies to McDaniel without RLI's prior approval. **(Exhibit 213)** With this letter, EDiS abandons its usual prior, informal style and moves with uncharacteristic determination and swiftness. **(Exhibit 214).**

Consequently relationships deteriorate rapidly subsequent to RLI's July 27th 2004. Starting from this July 27th, 2004 date EDIS starts inundating McDaniel with notices of failed performance (**Exhibit 215**), but, again, based on a criterion founded in an unimpacted schedule that largely has no allowance for significant delays by parties other than McDaniels.

Had EDiS, with IRSD approval, afforded an equitable adjustment to the contract the students would likely not have had the building until 2005, but conversely this would have allowed McDaniel the contractually mandated time to complete the project in line with the contractual durations and sequencing.

The second concern (aside from Delay) brought to fore by the engineer Allen & Shariff and EDiS is the quality of installations, and especially McDaniel noted deviation from design, this, along with chaotic supervision/management, all result from EDiS's constructive acceleration of McDaniel's performance to achieve a date that is not supported by our current schedule impact analysis. **(Exhibit 216).**

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From the July 27th RLI letter of payment notice it was only thirty days later that Zimmer had supplanted McDaniel in the mechanical penthouses. **(Exhibit 217).**

Noting a minimum twelve week weather impact asserted by EDiS the final completion should be represented as November 2nd of 2002. Therefore with two months remaining until final completion Zimmer is brought in to subsidize McDaniel's performance. **(Exhibit 218).**

Using PCM's analysis set forth below and the final completion of February 7th, 2005 Zimmer was brought in five months prior to the final completion and three months prior to the substantial completion.

Despite an in depth review of afforded documentation we are unable to determine who came up with the idea of removing McDaniel from the penthouses, or who suggested that Zimmer take same over.

We are unable to determine how the initial purchase order to Zimmer was estimated, or who allowed Zimmer to dismantle the penthouses without pricing the repair essentially leaving the school vulnerable to this T &M request.

It appears the choice to use Zimmer to accelerate the contract is either privileged or not available during discovery, and the first time the documents mention anything regarding Zimmer's involvement is on August 20th, 2004 when A&S faxes to Zimmer the Above Ceiling Inspection reports.

Like any apprehensive situation, it only took weeks to move from inception to conclusion. On August 27th, only a month after RLI's letter, EDIS directs McDaniel that they've been evicted from the penthouses, but that McDaniel is to continue working on all other contract work. **(Exhibit 219).**

Three days later, on August 30th, 2004, three months prior to the MPH impacted substantial completion date (12/2/04), and five months prior to the critical path impact to final completion (2/7/05) (accounting for an early, but largely ineffective, start of finishes) established by PCM/McDaniel, EDIS confides to the IRSD that Zimmer is ready to take over A, C, D, E and F penthouses and that each penthouse has several days worth of work to get them completed. **(Exhibit 220).**

On August 31st, A&S and Zimmer tour the penthouses to review outstanding work. **(Exhibit 221).** On September 8th the IRSD gives Zimmer official notice that it is now responsible for the penthouses. **(Exhibit 222).** Attached to the notice was a list of work items to be accomplished, but no dollar figure - the letter says that Zimmer will issue a purchase order for the amount. **(Exhibit 223).**

From the project documentation it remains difficult to ascertain whether the IRSD was actively involved in EDiS impact analysis, or the decision making process that ultimately resulted in McDaniel's supplementation and finally termination was analyzed and presented by EDiS alone.

In that the IRSD's legal counsel

- directed them to not contract directly with Zimmer without McDaniels's consent
- argues that RLI's position regarding overpayment to McDaniel by EDiS/Becker Morgan has prejudiced remuneration.

(Exhibit 224)

It remains difficult to understand why the IRSD in fact took these actions in light of counsel recommendation and the clear progress being achieved at site despite significant impacts and delays.

Even as late as the November 18th, 2004 meeting (Exhibit 225), wherein the superintendent states to EDiS "You kept telling us he was doing a good job and he wasn't." would imply that IRSD was functioning solely on the recommendations and reporting of EDiS.

In the end it would appear that the decision to remove McDaniel, from the penthouse and Building F mechanical, arose from the situation occurring as a result of EDiS' failure to previously adjust the schedule for gross delay and active interference impacts arising from the belated performance of the concrete, steel, framing, and roofing contractors, and the out of sequence performance by the masonry and interior finishes contractors.

The effort to remove McDaniel from the project, altogether, may also arise from RLI's unwillingness to supplement McDaniel and therein fund the recovery schedule that EDiS was requiring in their recent schedule updates which recognize the IRSD's demand for a building to open five months ahead of the impacted schedule, without any cost allowance for accelerated performance.

Prior to Zimmer's introduction there was a significant amount of penthouse piping, valves and fittings to place, cut in, or revise (Exhibit 226), but the effort expended by McDaniel as a result of schedule acceleration and compression, was to get the units operational despite months of un recognized impact that would have afforded substantively more time to allow finish construction amidst controlled air.

Prior to Zimmer's involvement the rooftop AHU's, outside of the delayed F and B Buildings were complete. (Exhibit 227). Both boilers had been set and piped, and one of the two boilers was brought on line in September of 2004 (The second boiler required a pump replacement) (September Monthly Report (Exhibit 228)). The gas

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pipng in F, to bring the boiler on line was reported complete by Zimmer in the September project schedule update. **(Exhibit 229).**

As for the B Building that had a roof complete in June, and exterior walls complete in July, as of September exposed ductwork is substantially complete while concealed duct installation ongoing, piping and insulation is 98% complete. **(Exhibit 230).** Clearly, except for Building B, the mechanical performance in the remainder of the buildings, per EDiS September monthly report, is in the punch stage. **(Exhibit 231).**

The September 8th - 14th 2004 Updated Construction Sequencing **(Exhibit 232)** notes that McDaniel needs to complete above ceiling punch lists in Buildings A through F with all other open work, aside from balancing, in Building B.

The handwritten notes from the September 13th, 2004 executive meeting attended by Savage, Headman, Miller and Weer indicates that Zimmer Mechanical will start next week and that McDaniel only has \$300,000 left in its contract. **(Exhibit 233).**

While EDiS/IRSD positioned Zimmer to supplement McDaniel's effort to bring the penthouses, boilers, and overall mechanical systems on line, while simultaneously administering to punch lists in August, September and, in a more limited role in October, and progressing the more belated performance dates in F & B Buildings, all to afford occupancy months prior to the impacted performance requirements, met with an illogical response from EDiS/IRSD. **(Exhibit 234).**

The response was the introduction of Zimmer to supplement the penthouse construction as of August 27, 2004 **(Exhibit 235)**, and a notice of the owner consideration of terminating the contract on the 8th of September 2004. **(Exhibit 236).**

These two actions, in concert with the management team's unwillingness to recognize prior delay and active interferences, and the impact they had on McDaniel's finances, would stop any further distribution of remaining funds and consequently resulted in McDaniel's ten man crew, as of early September, dropping to an average five man crew. **(Exhibit 237).**

Clearly Zimmer's immediate actions in the Penthouse to dismantle all the mechanical rooms **(Exhibit 238)**, and subsequently increase the scope and cost to complete the penthouse demonstrated EDiS's continued difficulty in effectively managing the project.

On October 11th, 2004 Becker & Morgan recommended termination of McDaniel Plumbing & Heating predicated on their failure to staff the project with adequate labor and materials, the failure to pay vendors and the, poor workmanship and lack of shop drawings. **(Exhibit 239).** It appears the Becker Morgan did not consider the impacts of delays by prior contractors that impacted McDaniel's overall performance.

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The termination is even more of a concern in that at this juncture Zimmer was in fact in the penthouses and the F Mechanical room since early September, not McDaniel, and the penthouses are, like Building B and the outstanding punch items on the project critical path. (Exhibit 240). Clearly, in that McDaniel had already been subsidized in an effort to accelerate performance they were responsible for a far smaller project scope, and were progressing same prior to the threat of termination had adverse impact on their finances. (Exhibit 241)

ANALYSIS OF THE CRITICAL PATH AT THE IRSD PROJECT BASED UPON THE FOREGOING FACTUAL AND SCHEDULING TIMELINES

To properly compile or analyze a schedule it is necessary to have a product that is detailed and logical. In either case, the integrity of the schedule's activity descriptions, outline structure (Break out of the work by area, scope, contractor, etc.) and logic relationships, govern how effectively the schedule outlines issues of progress.

In the immediate case of EDiS' scheduling at the Sussex Central High School, none of these elements existed to such a level as to afford a reliable schedule for immediate review.

As a result, only after investigation of various schedules and their planned sequences, and development of actual performance dates throughout the performance period, could comparisons be made.

The initial report dealt with EDiS' various schedules which contained questionable, or in many cases no logic ties. This difficult scheduling review effort was further exacerbated by erratic updating and continual logic, activity and duration revisions by EDiS throughout the project.

That the schedule was unavailable in an electronic format, from EDiS or IRSD, during discovery, and noting that the schedule was incorporated into a minimum of twenty four Monthly Reports, and untold interim progress meetings, further complicated the review.

But more so the methods utilized by EDiS in updating the schedules, wherein activities were not statused to the purported data date, but were allowed to exist months or weeks earlier, but with no actual commencement and often were shown with no actual start, but still months prior to the data date, defied basic scheduling convention and resulted in a schedule that is not a CPM, nor a bar chart, and generally results in the dissemination of flawed data to the various primes.

An example of this updating is found throughout the October 13th, 2003 Rev 3, OCT03 schedule update (**Exhibit 242**). In building A of this schedule it represents that Exterior Metal Studs and Sheathing commenced on August 21st, 2003, but has no actual completion date as of October 13th, 2003, and is critical per this schedule. A CPM schedule would require the activity, at a minimum to run to the data date of October 13th, 2003. In this case the activity only runs the baseline duration to September 3rd, 2003 thereby obscuring an additional forty days of possible impact.

In that same October 13th, 2003 schedule and in that same building A, activities for Interior Metal Studs and Ductwork Installation are also similarly inaccurately dealt with, and were also noted as critical.

Given the concerns regarding the efficacy of the base product, that any analysis would be predicated upon, we have opted to, for the purpose of providing this supplementary information, to utilize the Rev 18 November 2002 progress schedule asserted by EDiS to be the baseline product.

Further, during their short period of co-existence McDaniel had no overview of Zimmer's efforts, and the scope of work, or better said the engineer and Zimmer's interpretation of this scope, would drive the contract critical path along with the completion of B Building, neither of which was under McDaniel's control.

We continue to insist upon McDaniel's right to rely upon the performance dates incorporated in the contract documents, but to afford further understanding of the methodology employed in compiling the impacts and quantifying the delays I feel we can, in this supplement use the Rev 18 November 2002 schedule and still demonstrate the majority of impacts to the project as indicated as follows:

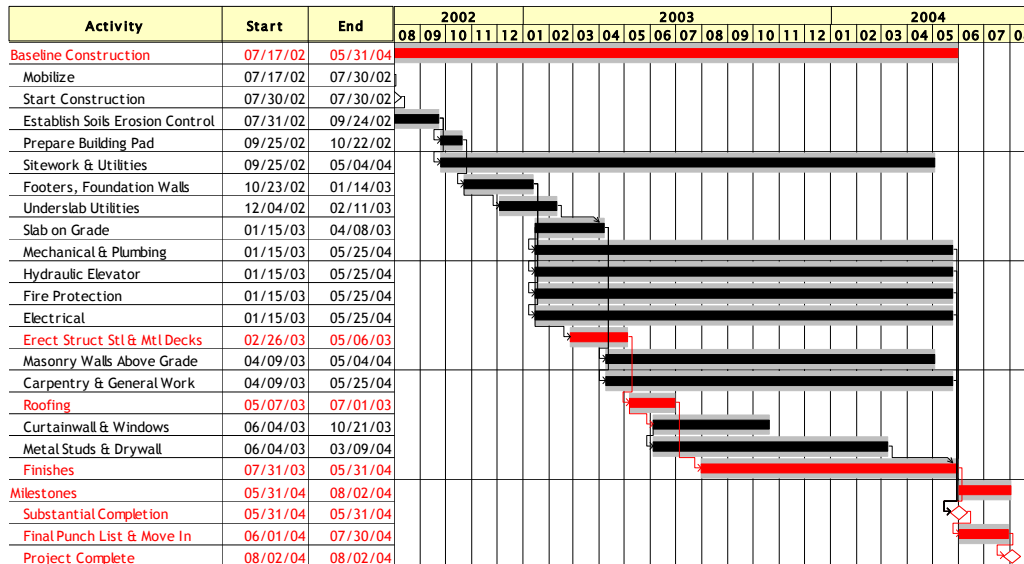
Contract Performance Dates Versus the September 12th, 2002 & November 19th, 2002 EDiS schedule (Rev 18 NOV 02)

The chronological method of reviewing events, in context with the progress meeting minutes, monthly reports and graphic schedule representations distributed by EDiS on at least a monthly basis, afforded a methodology where the gaps, or flaws, in EDiS' logic and reporting could be, in many cases, corrected through the observation and reporting of those events transpiring on the site.

Since the submission of that report, the baseline schedule and methodology have been questioned and a call for additional support for the initial methodology/scientific analysis of the schedule has been requested.

Clearly, the performance dates set forth in McDaniel's contract documents are a representation of dates that were to be maintained, although sequencing and

additional detail was fully anticipated. The schedule we referenced in the initial report is noted below:



In response to those who argued this schedule was flawed in that it failed to delineate separation of foundation, under slab utility, slab on grade and structural steel placement by building, I respond that given the configuration of the buildings and their tight, adjacent placement, that it was wholly reasonable to consider the feasibility of:

1. Placement of the entire building pad, followed by...
2. Commencement of footers, and foundations, and approximately four weeks after the start of that foundation, the...
3. Commencement of under slab utilities for the entire footprint, followed by the...
4. Slab on Grade Placement, starting approximately five weeks after the start of Underground Utilities and directly following Footers and Foundations, and...
5. Finally the placement of structural steel would start after the completion of under slab utilities and six weeks after the commencement of the slab (Thereby avoiding danger to under slab installations and ongoing concrete operations).

Therefore this was a reasonable interpretation given that the actual time expended from the start of foundations through completion of steel (From Schedule RL21 attached as **Exhibit 243**) comprising the performance duration for the aforementioned Excavation, Concrete Foundation, Under slab Utility and Structural Steel scope was (10/15/02 - 4/7/04) 540 calendar days (Schedule RL21), whereas the contract

document relied upon in the initial report represented the same sequence, but ran from September 25th, 2002 through May 6th, 2003, or 223 calendar days.

Act ID	Description	OD	Early Start	Early Finish	2002												2003											
					N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A						
+Concrete Operations																												
		241	15OCT02 A	16SEP03 A																								
+Underslab Utilites																												
		148	09JAN03 A	04AUG03																								
+Structural Steel																												
		180	13MAY03	19JAN04 A																								
+Slab Construction																												
		246	30APR03 A	07APR04 A																								

It is my opinion that the sequencing of the excavation, foundations, underground utilities, concrete slab and steel were not only reasonable performed as a single installation, but if implemented as represented, would have afforded follow up contractors the time ultimately lost in the failed foundation/steel construction sequence implemented on the project by EDiS.

Given the configuration of the building and the representations made to McDaniel, I disagree with suggestions that the performance dates from the contract were flawed.

As noted earlier it has been suggested that the November 19th 2002 schedule was the intended baseline, yet that schedule had only partial detail of interior construction sequences for rough and finish construction.

Not until the progress meeting of January 6th, 2004 and the distribution of the January 5th data dated Rev 3 Dec 03 schedule was McDaniel in receipt of a schedule that would allow them adequate logic, detail and progress information to discern the impacts dating back to October of 2002, specifically the impact arising from delayed foundation and steel placement followed by subsequent delays to roof placement, exterior metal stud and sheathing installation and interior framing.

As a basis for that review, and given recent statements regarding the November 19th, 2002 schedule, I have included in this supplementary section a review of the November 2002 schedule relied upon by EDiS. All calculations, analyses, data compilations, scheduling and conclusions are based upon a reasonable degree of construction management certainty and have been rendered in accordance with generally accepted and recognized construction management principles and practice.

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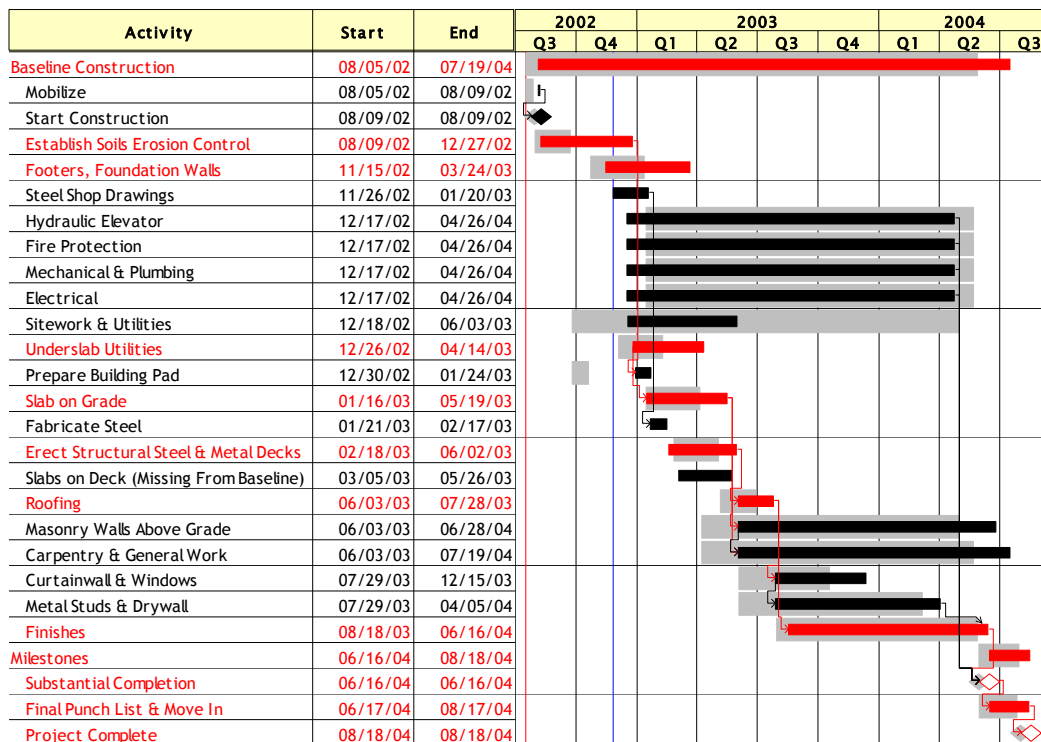
The September 16th, 2002 Progress Schedule

We have supplied, attached, in Timeline scheduling, and PDF format, the schedule titled MPH03 used in our prior report to graphically represent the comparison of the contract performance dates and the September 16th, 2002 progress schedule.

Additionally we direct the reader to documents noted in the initial report including, but not limited to, Daily report, progress meeting minutes, monthly progress reports, schedule handouts, etc.

This schedule compared the detail activities from the September 16th, 2002 schedule to the corresponding activities set forth in the contract performance dates. This comparison both added detail and adjusted the performance dates for progress achieved as of that September 16, 2002 data date.

This schedule illustrated that starting with the September 16th 2002 schedule there has been a definable impact to foundation installation which continued through under slab utilities and then slab on grade placement thereby impacting the September 16th 2002 schedule's critical path. This is demonstrated by the following illustration, and attachment MPH03.



Given that the main mechanical trades, carpentry and finish scopes had not been fully segregated, I noted the slippages by building, using the logic from the September 16th, 2002 schedule, but did not surmise a critical impact, I noted the slippages to what are industry standard critical activities after adding the detail and logic from the September 16th, 2002 schedule.

It should be noted that the bars in the schedule illustration were summarizations of further activity detail that can be viewed in MPH03.

To view the actual impact to the contract completion date, as a result revisions in the September 16th, 2002 schedule you can view MPH03 in PDF or TLW format. The prior plate summarizes the impact of the September 16th, 2002 schedule to contract performance dates.

The November 19th, 2002 Project Schedule

Arguments that the November 19th, 2002 CPM schedule was “intended” by EDiS to be the project baseline are of concern in that the November 19th, 2002 schedule had little more detail than the September 16th, 2002 schedule. Specifically the November 19th, 2002 schedule focused largely on foundation and shell construction with a limited outline of mechanical trade responsibility, but no finish sequences, or electrical contract scope activities.

We have supplied with this overview a series of CPM schedules that were used to analyze the project at specific junctures using the logic incorporated in the November 2002 schedule and later trade and finish logic.

As noted earlier, it is imperative to note that the initial report relied upon the schedule dates incorporated in the contract documents, which established a sequence much different from the November 19th, 2002 schedule asserted by parties to be EDiS’s intended project schedule.

As part of the prior report, contemporaneous analysis of the September 2002 and November 2002 schedule was implemented. Given the concern regarding methodology, this report will also attach analysis of the November 2002 schedule, through the project performance duration.

In an effort to compile one baseline schedule to aid in tracking progress, I have entered those activities and logic from the schedule that EDiS had recently cited as their initial progress schedule (Schedule Rev 18 NOV 02).

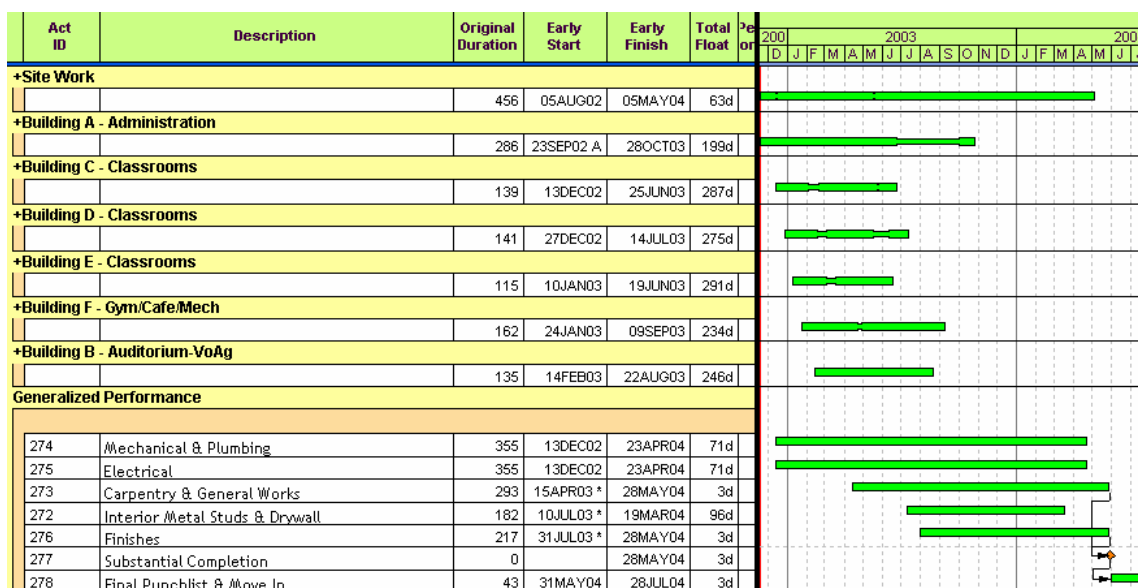
I established that logic I could discern from activity ties in the November 2002 printout, but I note that the record is unclear and at times contradictory. Additionally,

subsequent schedules repeatedly revise project logic further exacerbating the effort to compile an as planned schedule.

I have been informed by counsel that no electrical data for the schedules has been located, therefore this effort stands as a reasonable alternate method in compiling a baseline schedule to gauge performance by.

Therefore, in summary, based on the foregoing analysis, the November 19th, 2002 schedule, asserted by EDiS to be the project baseline does not depict construction activity detail beyond a milestone for the commencement of framing and a limited assortment of mechanical trade rough activities followed by a group of summary bars for Mechanical and Plumbing, Electrical, Carpentry and General Works, Interior Metal Studs and Drywall, Finishes, Substantial Completion and Punch/Move-In, similar to the methodology used in the contract performance dates.

As noted in the following plate (We have summarized the detail for the November 19th, 2002 schedule for the various buildings, which can be viewed, including detailed relationships, duration and description by going to the attachment (ED01.PRX, Exhibit 1):



Again, as of the November 19th, 2002 schedule the broad work scopes that have been grouped under the title of “Generalized Performance”, had no detail, nor were they segregated by activities by Building Area.

This lack of activity detail, and corresponding logic, casts doubt as to this being an acceptable, initial baseline schedule, or meeting the scheduling needs as required by contract.

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To remedy this lack of detail it was necessary to utilize logic from later schedules to extend the November 2002 schedule activities, logic and durations and therein afford a complete baseline schedule including all possible ties.

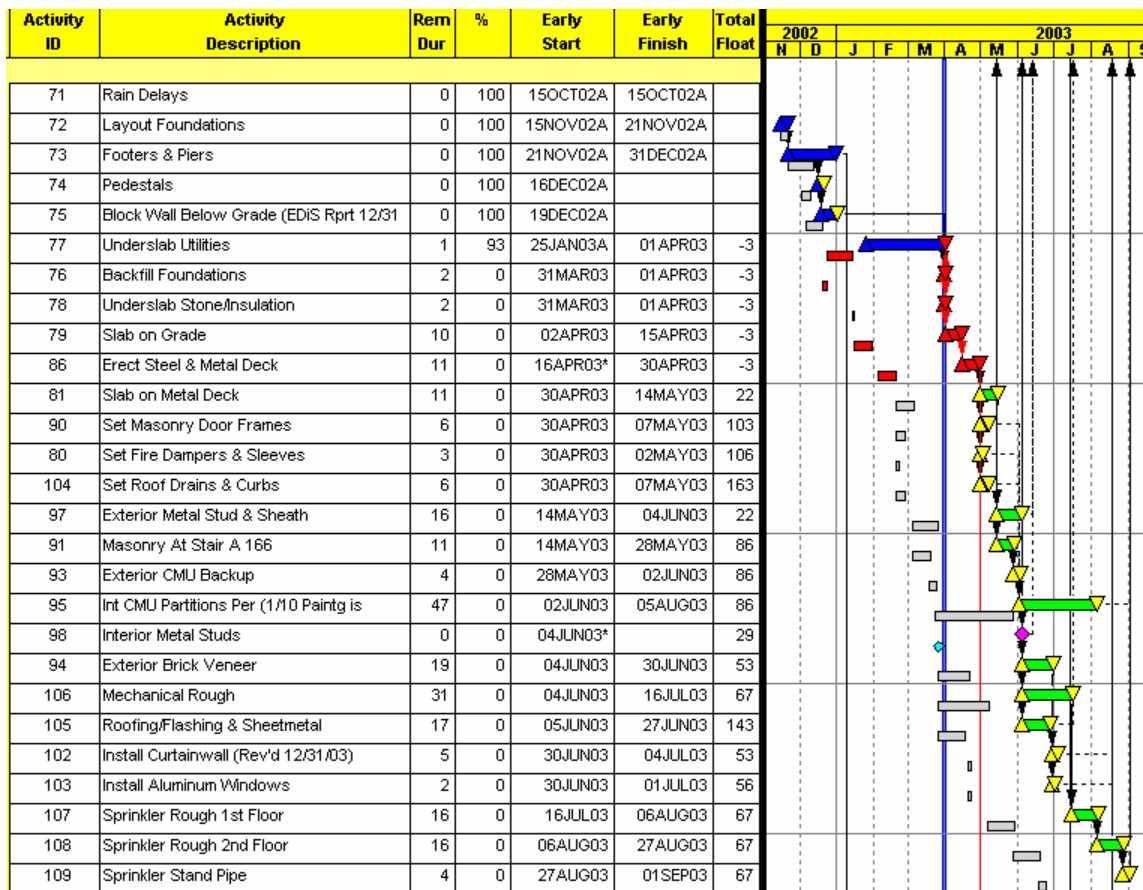
For analysis of planned progress through May 2003, I was able to utilize the November 19th, 2002 logic. Subsequent to that date I required the additional detail found in later schedules.

To complete the detail and logic required for the later portion of this as-planned schedule it was necessary to garner required activity detail and logic from a number of later schedules, in that EDiS released the remaining schedule detail in pieces, in various schedules over a broad period of time.

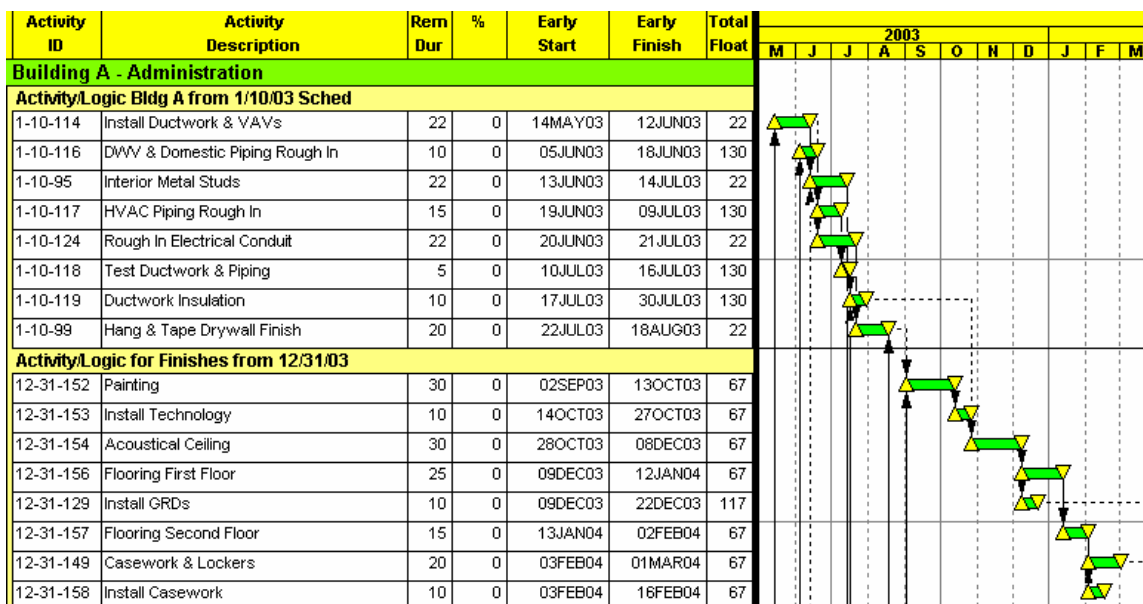
I have used the January 10th, 2003 Update to add required activities and detail to the A Building logic. My analysis throughout has implemented the updated schedules issued by EDiS in order to keep track of the project and determine the status of the project through application of the data and information provided by EDiS in their project reports and reports to IRSD.

The February 7th, 2003 data date EDiS progress schedule provides further detail regarding metal framing, mechanical/electrical rough in buildings A through D, and finally the December 31st, 2003 EDiS progress schedule provides logic, activities and durations for finish activities from paint through window treatments.

The Logic afforded in the November 19th, 2002 schedule, for Building A, is noted below as an example of the methodology employed to assemble a schedule from a number of schedules (ED8R, Exhibit 4). The first illustration represents that scope of the A building taken from the November 19th, 2002 schedule:



The additional information added from the January 10th, 2003 and December 31st, 2003 schedules afforded the following rough and finish detailed activity durations and logic:



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I note that the dates in the January 10th and December 31st 2003 schedules, as added to the baseline logic, do not match their update in that I am utilizing the activity detail, durations and logic while transposing said logic to an earlier date in the contract to properly tie to the November 19th, 2002 schedule.

Using this methodology, on each building, has generated an as planned schedule that is formulated from the November 19th, 2002 EDiS schedule logic.

Though this methodology does result in a credible as-planned schedule it also excuses substantial foundation delays that transpired prior to November 19th, 2002. This is why our initial report and my current opinion is that McDaniel had the right to rely on the dates incorporated in their contract documents and the implementation of the November 19th, 2002 schedule, by EDiS, unilaterally, mitigated substantial foundation delays prior to November of 2002 at the expense of follow up contractors.

Additionally, given the incomplete nature of the early schedules from EDiS, it is my opinion that at no time, prior to the issuance of the December 31st, 2003 schedule, did EDiS present to McDaniel a schedule that represented all buildings incorporating reasonable activity detail and logic that would have afforded McDaniel an understanding of EDiS' planned project progress.

Only with that understanding of the overall plan for construction could McDaniel discern mounting delays to the foundation construction and the impact they ultimately had on McDaniel's under slab utility installation.

It remains my opinion that McDaniel had the right to expect and rely upon the performance, sequencing and durations incorporated in the contract schedule generated from the milestone dates in McDaniel's contract documents, but to explain the impacts in more detail and forward the analysis of the project, we also include the November 19th, 2002 as planned schedule for updating, comparison and analysis.

EDiS Asserted November 19th, 2002 Baseline Schedule

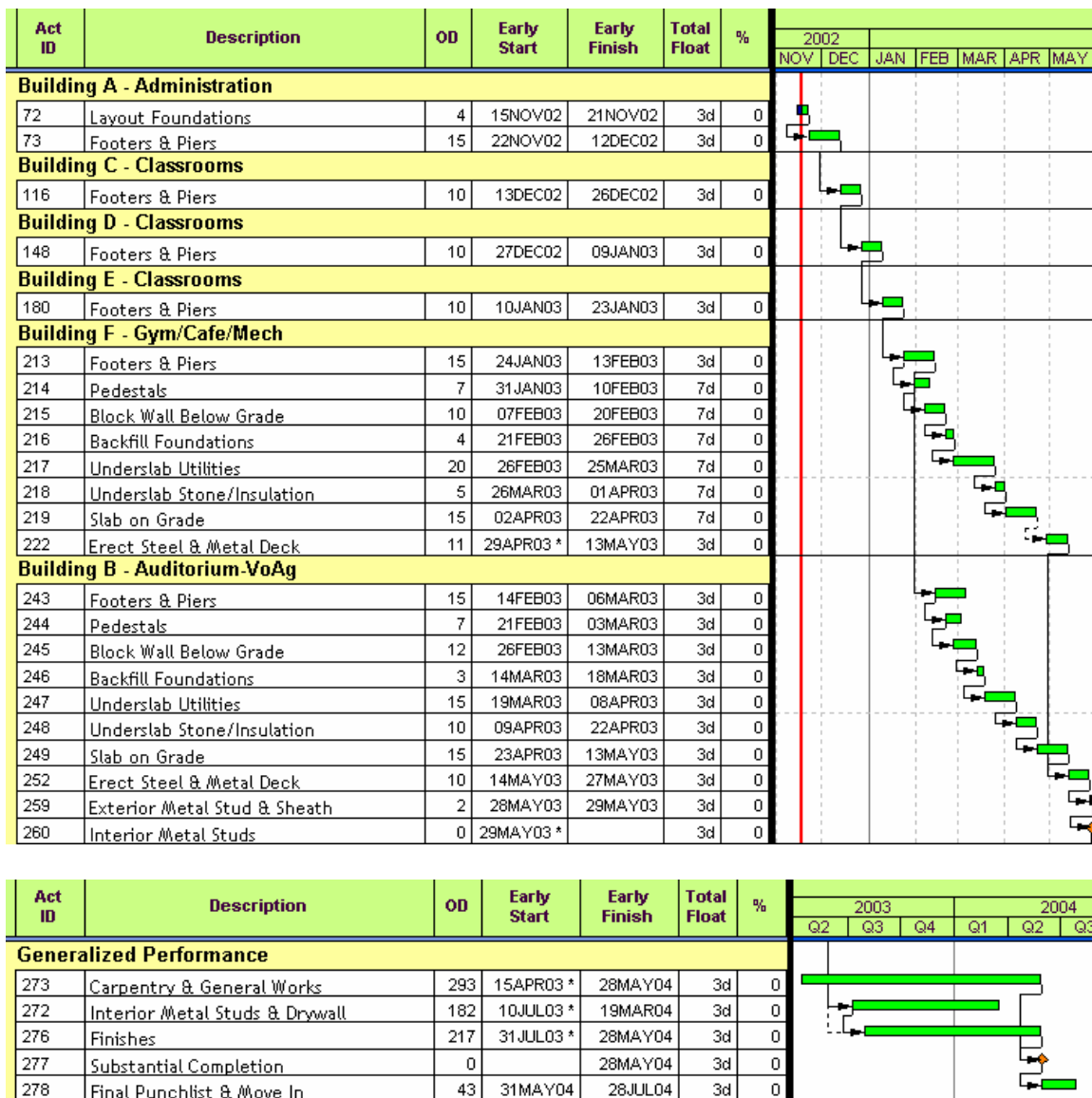
As noted earlier, for performance prior to May 2003 we have used the initial November 19th, 2002 schedule attached for review with the designation ED01 in PRX and PDF format.

Sussex-McDaniel P&H

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Act ID	Description	OD	Early Start	Early Finish	Total Float	%	2002	2003				2004	
							Q4	Q1	Q2	Q3	Q4	Q1	Q2
+Site Work													
		456	05AUG02	05MAY04	63d	6							
+Building A - Administration													
		180	15OCT02 A	23JUN03	289d	0							
+Building C - Classrooms													
		139	13DEC02	25JUN03	287d	0							
+Building D - Classrooms													
		141	27DEC02	14JUL03	275d	0							
+Building E - Classrooms													
		115	10JAN03	19JUN03	291d	0							
+Building F - Gym/Cafe/Mech													
		162	24JAN03	09SEP03	234d	0							
+Building B - Auditorium-VoAg													
		135	14FEB03	22AUG03	246d	0							
Generalized Performance													
274	Mechanical & Plumbing	355	13DEC02	23APR04	71d	0							
275	Electrical	355	13DEC02	23APR04	71d	0							
273	Carpentry & General Works	293	15APR03 *	28MAY04	3d	0							
272	Interior Metal Studs & Drywall	182	10JUL03 *	19MAR04	3d	0							
276	Finishes	217	31JUL03 *	28MAY04	3d	0							
277	Substantial Completion	0		28MAY04	3d	0							
278	Final Punchlist & Move In	43	31MAY04	28JUL04	3d	0							

There is a substantial amount of float in this schedule, aside from the near critical path established by the logic inherent in the schedule. I have not attempted to formulate ties that were not in the original presentation unless I am unable to identify a critical or near critical path. In the case of this baseline the most critical path is noted below:



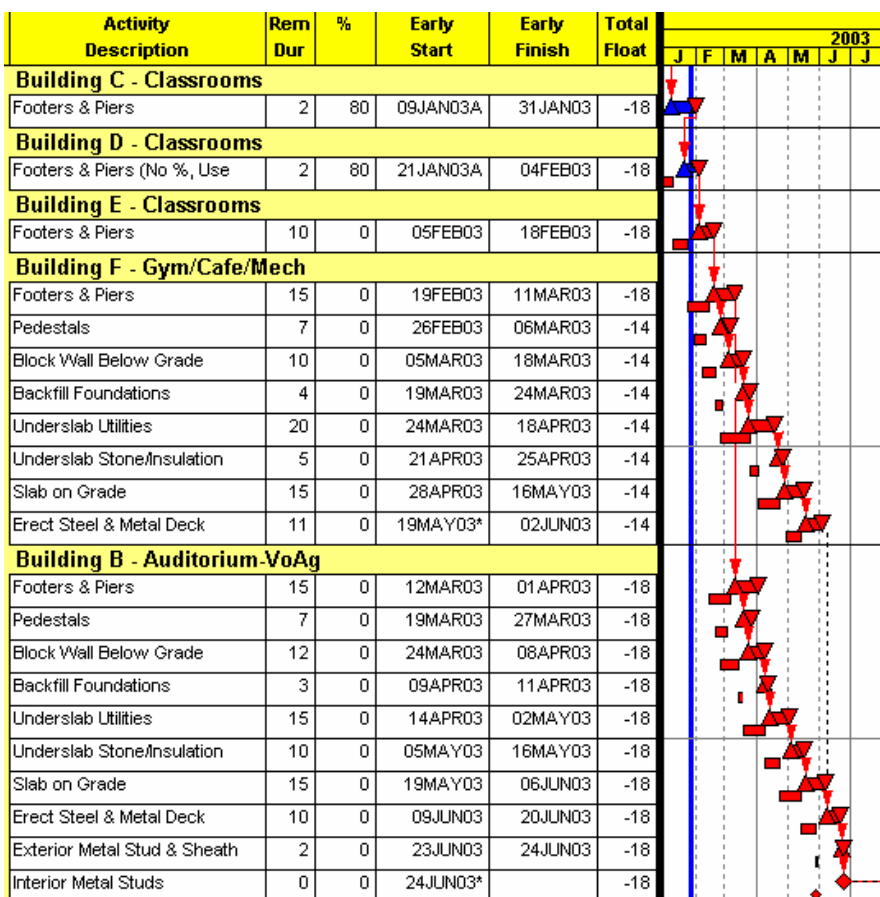
Concerns over the logic tie between Auditorium Wing and Interior Metal Studs and Drywall forcing generating delays is initially of concern, but given that we have used the activity dates, descriptions and all available logic I am confident that the timing is accurate and in line with what could have been expected when viewing this schedule in November of 2002.

Additionally, the switch to the aforementioned As Planned schedule as of May 2003 mitigates much of the delay impact incurred up to the November 2002 issuance.

Update Period # 1: November 19th, 2002 Schedule Status as of January 21st, 2003

The first review period transpires more than two months after the issuance of the November 19th, 2002 project schedule. The analysis incorporates information up through the January 21st, 2003 EDiS project progress meeting.

Specifically, as of the 21st of January 2003, further delay in foundation construction has transpired. The plate below illustrates that the project had slipped a total of eighteen work days behind schedule utilizing the November 19th, 2002 progress schedule logic (ED03, Exhibit 2).



The direct impact to McDaniel was the inability to access those areas of underground installation, due to ongoing, delinquent foundation construction, and complete the underground in line with the un-impacted November 19th, 2002 dates.

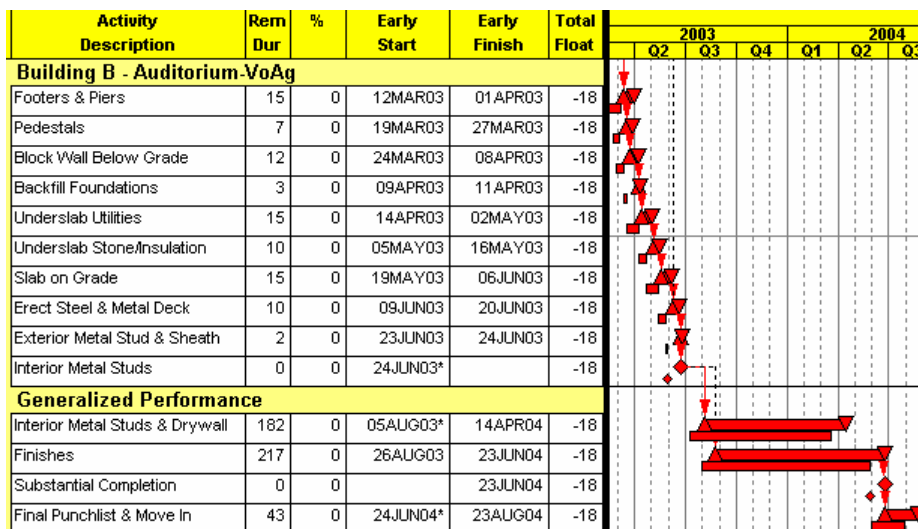
The un-impacted November 19th, 2002 schedule performance dates that had McDaniel complete with underground installations in Buildings A, C and approximately one half of D as of the 21st of January 2002, contrast to the reality where McDaniel was only

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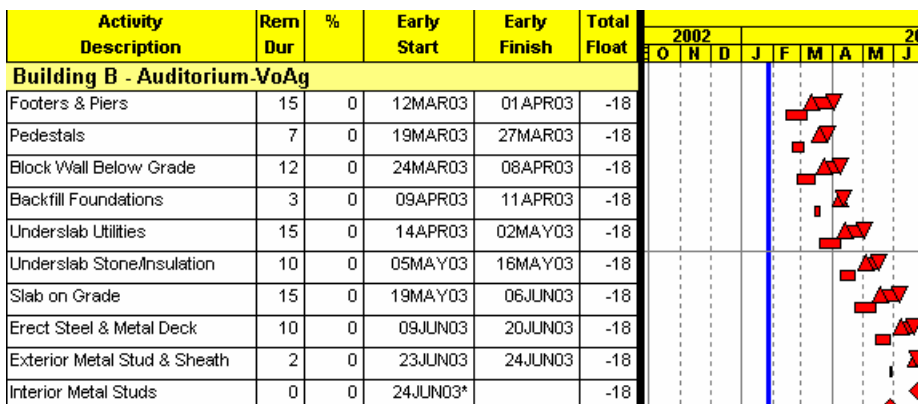
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able to start building C as of January 15th, 2003, several days shy of an entire year than expected.

The following illustration illustrates the second half of the critical path from the January 21st, 2003 status of the November 19th, 2002 schedule. Using EDiS' logic, the critical path runs through B Building and then onto the Metal Stud and Drywall, Finishes and finally substantial completion.



Comparing the impacted November 18, 2002 performance, as of January 21st, 2003, to the **original dates referenced in the contract documents**, I note that the Impacted November 2002 schedule, as of the 21st of January 2003 had B Building foundations, including below grade masonry walls, completing on April 8th, 2003 (See following plate ED02, Exhibit 3).



That April 8th, 2003 completion of all foundations from the impacted November 2002 schedule versus the January 14th, 2003 performance date for the same work from

McDaniel's contract documents (January 14th, 2003), results in a far greater impact to McDaniel, in this case a loss of eighty seven calendar days.

Regardless of which schedule is ultimately realized as that governing contract performance, the issue is that as of this date, McDaniel has been able to commence neither A nor C Building underground utilities.

Update Period # 2 April 29th, 2003

Further demonstrating the logic and dates used to establish impact predicated on the November 19th, 2003 schedule, the next period of schedule review coincides with performance through job progress meeting # 17, held on April 29th, 2004.

As of the April 29th 2003 project meeting foundations had recently completed in building A (April 25th, 2003) allowing under slab utilities to continue. Additionally, footer construction continued in Building C, albeit four months behind schedule.

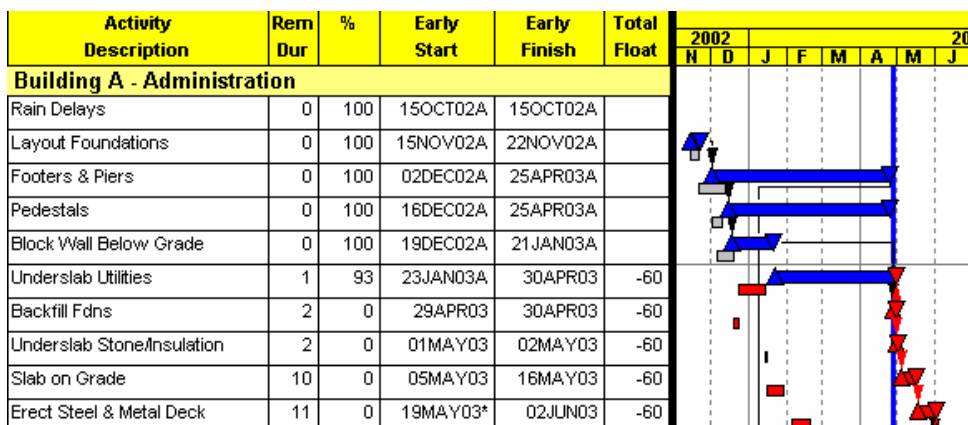
The concerns previously noted, regarding the delayed completion of foundations, are further amplified in the April 29th, 2005 update.

With the Footers complete, the backfill would commence and mechanical rough start thereafter.

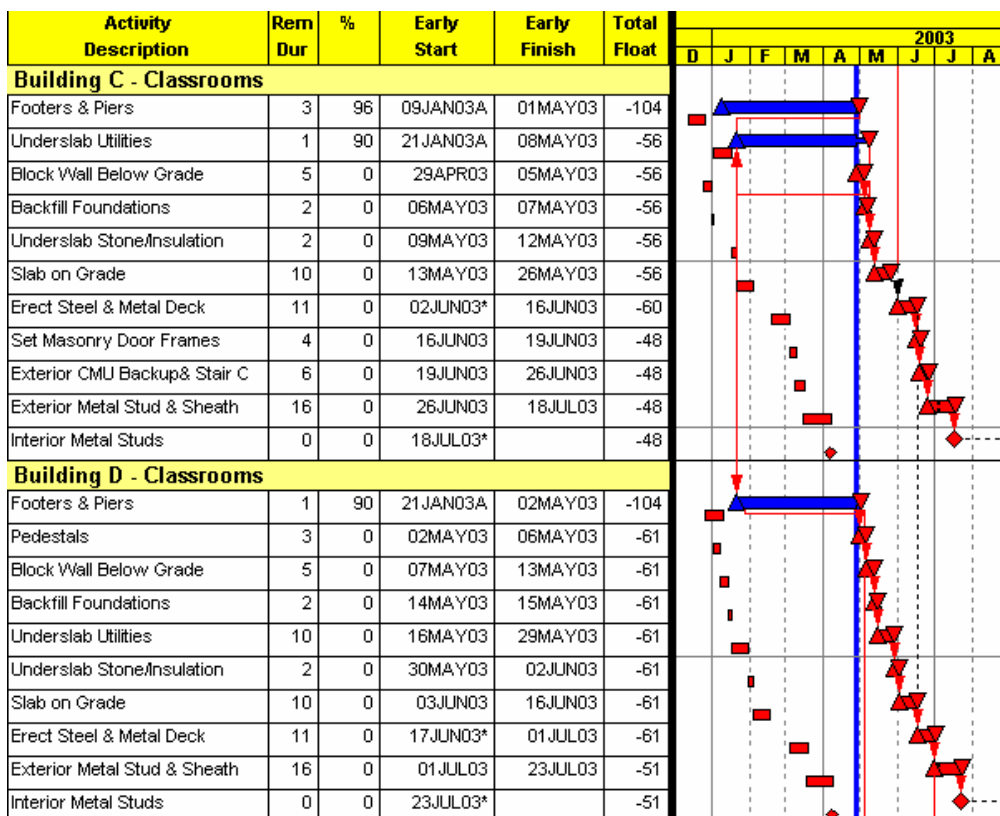
From the illustration (For a complete schedule analysis see ED05 or PDF attachment 3 - **EXHIBIT 244**) it is evident that McDaniel commenced well in advance of the April 25th completion of footers to mitigate the mounting delay. We have been unable to find verifiable dates for foundation backfill and have taken a conservative review path by changing their predecessor logic relationship with underground utilities from finish to start to finish to finish.

Such performance though mandated by mounting delays is costly requiring McDaniel to work in and around erratic grades, poor access and limited work areas. In conversations with Mr. McDaniel he corroborated the difficult in working concurrent with the excavation and concrete placement activities while his forces attempted to forward their scope.

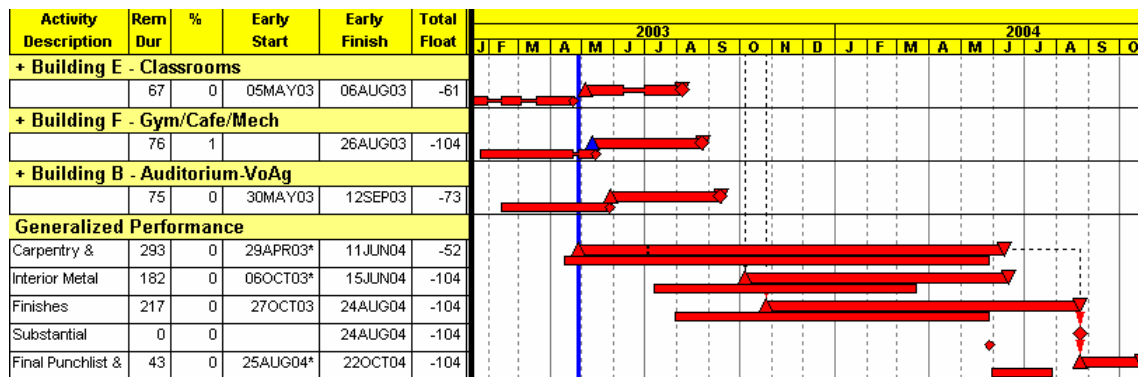
Had there not been delays to foundation performance the logic incorporated in the November 19th, 2002 schedule could have been adhered to allowing under slab utility performance to follow the completion of foundations rather than proceed concurrent with them:



The relationship tie between footer construction in buildings A, C and D carries forward the greatest negative impact sequence of 104 work days:



The same footer construction logic carries the impact through buildings E, F, B ultimately resulting in an impacted completion, as of the April 29th, 2003 review date, of October 22nd, 2004, an overall delay of 104 calendar days.



Noting that the A building footings were complete only four days prior to the April 29th, 2003 review date, and that the C and D footings remained incomplete as of the 29th of April 2003, it is reasonable to conclude that McDaniel's performance of underground utilities is being impeded and although underground utilities are on a secondary lesser negative logic path they are, and will continue to consume available performance time unless a revised contract completion date, commensurate with the incurred impacts is issued in a timely manner.

The EDiS April 2003 Monthly Progress report to Indian River represents a September 16th, 2004 overall completion for the project which, in my opinion, given the rudimentary nature of the November 19th, 2002 logic being used, compares favorably with the review impact completion date of October 22nd, 2004.

Update Period # 3 - Status as of June 2003

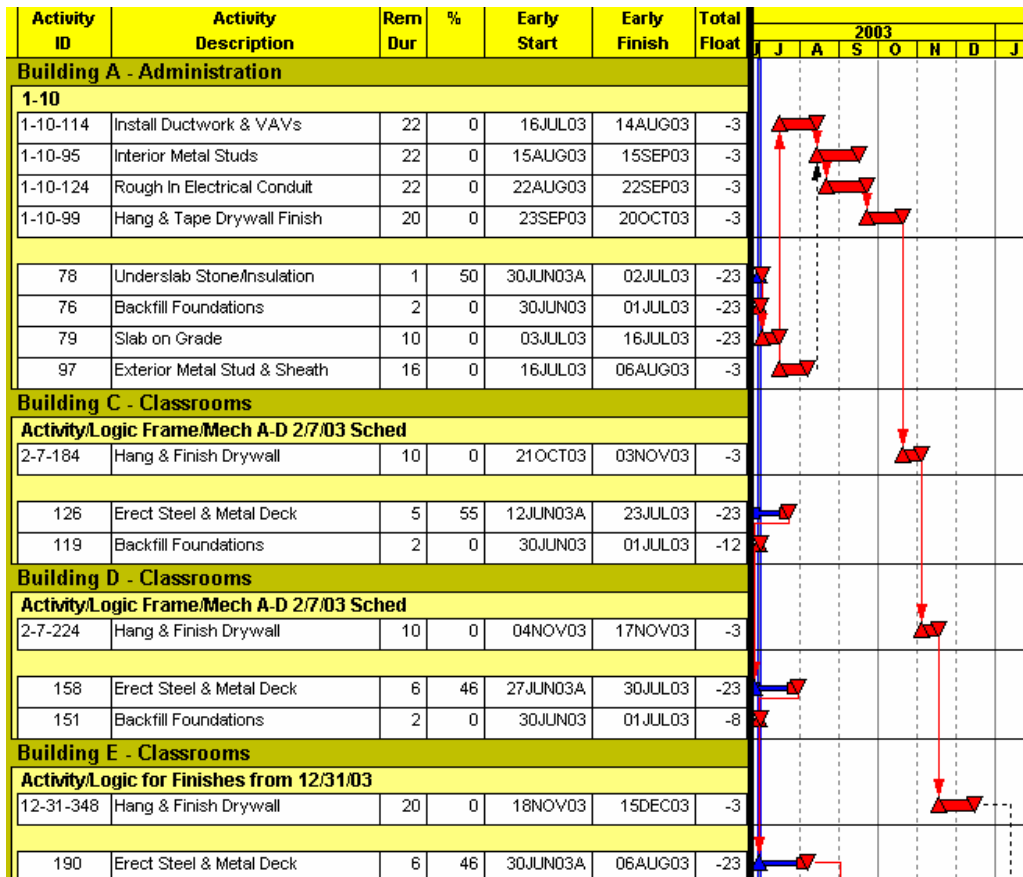
As noted earlier in this narrative supplement, as of June 30th, 2003 I inserted additional logic from the aforementioned January 10th, 2003, February 7th, 2003 and December 31st, 2003 project schedules to formulate a hybrid as planned performance schedule based on what EDiS asserts is their initial project schedule, the November 19th, 2002 schedule.

The result of the revised logic, and improved performance dates for foundation construction resulted in a revised contract completion date of September 2nd, 2004, approximately fifty calendar days earlier than the completion milestone from the April 29th, 2003 impact review of the initial November 22nd 2003 schedule (without the added finish activities and detail).

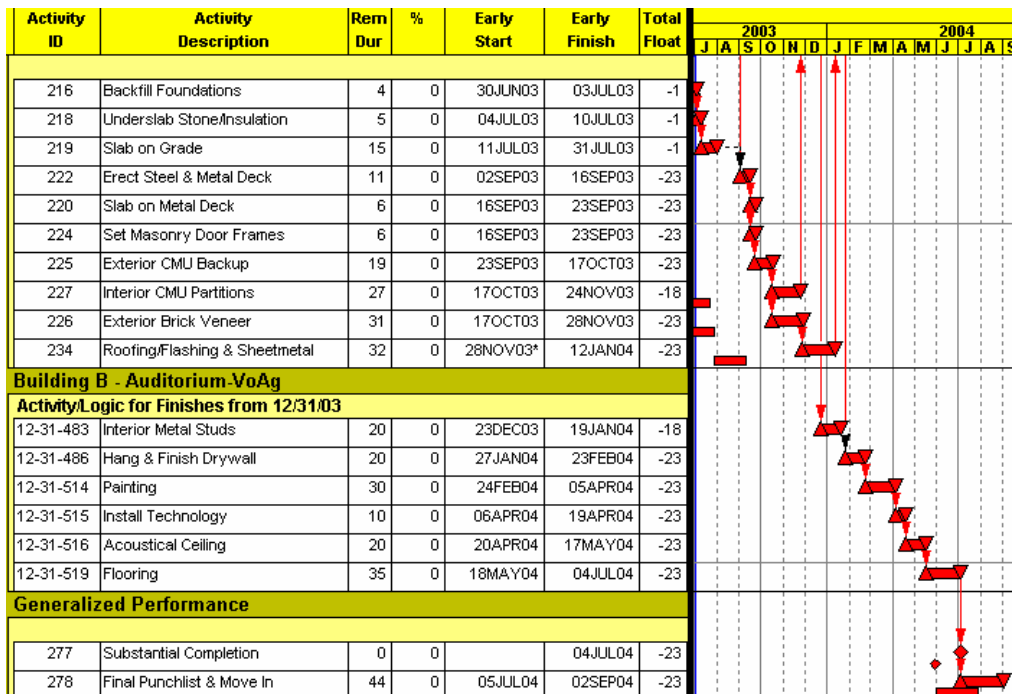
Clearly the sequences utilized in the January 10th, 2003, February 7th, 2003 and December 31st, 2003 schedules that are the basis for the added activities were implemented later in the contract performance period and likely utilized sequences and durations to improve performance on the impacted project. Therefore, as a

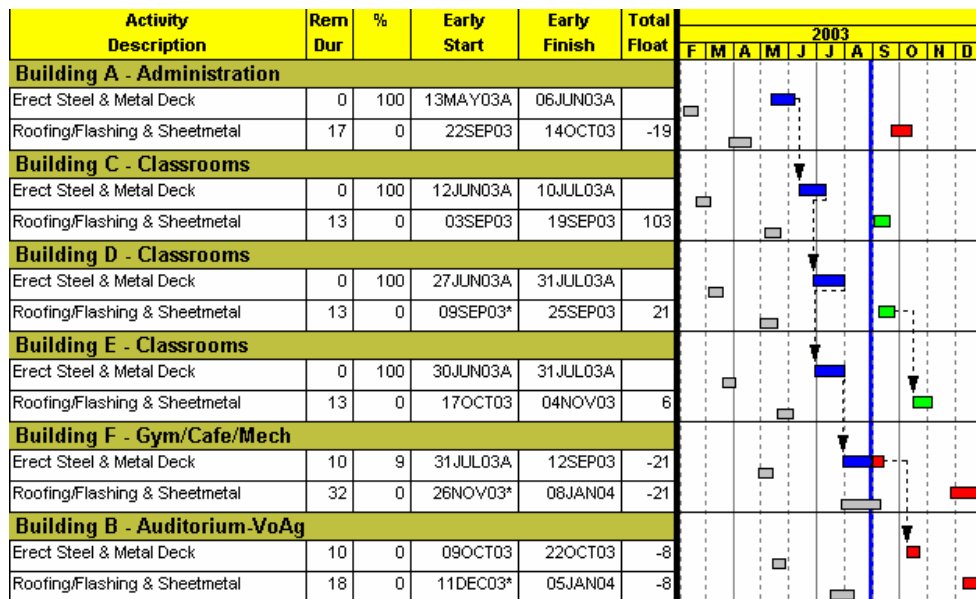
consequence of the need to utilize the later logic strings, for finishes sequences, the November 18, 2002 baseline schedule has been accelerated.

The following plate reflects the -23 work day critical path for buildings A, C, D & E (Schedule PRX RL11, attachment 5 - Exhibit 245):



With the completion of flooring in B building on the 4th of July, 2004 and the subsequent two month punch and move in, the contract completion milestone has now slipped from August 2nd, 2004 to September 2nd, 2004.





One person who reviewed the initial report suggested that in that photograph he had seen a photo wherein ductwork was being hung in an area with a visible puddle on the floor, that this was vindication for the questionable logic ties in the EDiS schedule.

I can tell you from experience that the effectiveness of hanging duct in an unprotected space whether it be cold, windy or wet, poorly lit, plagued by unsuitable access, or congested with stacked trades, is next to nil. McDaniel experienced all these conditions during the winter of 2003 - 2004.

But not only roofing is impacting the project, curtain wall, sheathing and exterior framing also are running in excess of five months behind schedule, and as noted in the illustration below (Schedule RL13), many will not be enclosed until, December of 2003, four months hence.

Activity Description	Rem Dur	%	Early Start	Early Finish	Variance 1 Early Finish	2003												
						F	M	A	M	J	J	A	S	O	N	D	J	F
Building A - Administration																		
Exterior Metal Stud & Sheath	16	0	28AUG03A	22SEP03	-128													
Install Aluminum Windows	2	0	16OCT03	17OCT03	-128													
Install Curtainwall (Rev'd 12/31/03)	5	0	16OCT03	22OCT03	-131													
Building C - Classrooms																		
Exterior Metal Stud & Sheath	0	100	21JUL03A	20AUG03A	-97													
Install Aluminum Windows	6	0	03SEP03	10SEP03	-86													
Window Treatment	2	0	03MAR04	04MAR04	0													
Building D - Classrooms																		
Exterior Metal Stud & Sheath	0	100	31JUL03A	31AUG03A	-102													
Install Aluminum Windows	6	0	22SEP03	29SEP03	-103													
Install Window Treatments	2	0	06FEB04	09FEB04	0													
Building E - Classrooms																		
Exterior Metal Stud & Sheath	16	0	01SEP03	22SEP03	-108													
Install Aluminum Windows	6	0	17OCT03	24OCT03	-108													
Install Window Treatments	2	0	27FEB04	01MAR04	0													
Building F - Gym/Cafe/Mech																		
Exterior Metal Stud & Sheath	3	0	12SEP03	16SEP03	-88													
Install Curtainwall/Windows	16	0	26NOV03	17DEC03	-87													
Building B - Auditorium-VoAg																		
Exterior Metal Stud & Sheath	2	0	23OCT03	24OCT03	-106													
Install Curtainwall/Windows	18	0	11DEC03	05JAN04	-105													

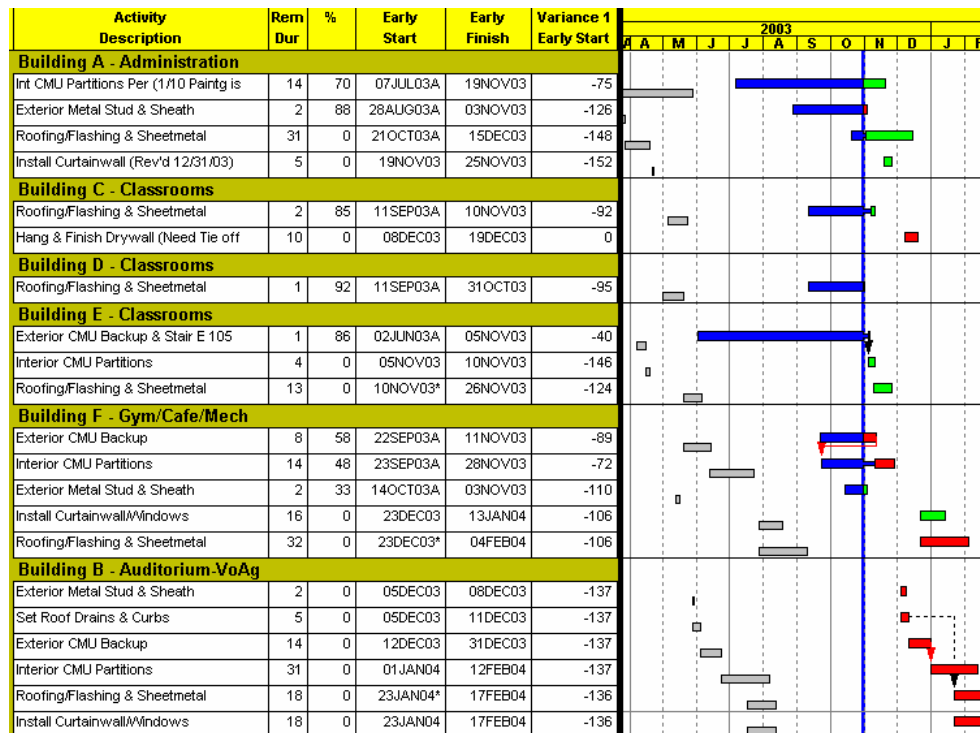
Update Period # 5 - Status as of October 2003

In October of 2003 (PRX RL15, Attachment 8 - EXHIBIT 247) the trend in delay reduction arising from revised logic appears exhausted with negative critical float rising to -39 work days.

Activity Description	Rem Dur	%	Early Start	Early Finish	Total Float	2003											
						O	N	D	J	F	M	A	M	J	J	A	S
Building B - Auditorium-VoAg																	
Activity/Logic for Finishes from 12/31/03																	
Hang & Finish Drywall	20	0	18FEB04	18MAR04	-39												
Painting	30	0	17MAR04	27APR04	-39												
Install Technology	10	0	28APR04	11MAY04	-39												
Acoustical Ceiling	20	0	12MAY04	08JUN04	-39												
Flooring	35	0	09JUN04	26JUL04	-39												
Generalized Performance																	
Substantial Completion	0	0		26JUL04	-39												
Final Punchlist & Move In	44	0	27JUL04	24SEP04	-39												

As noted earlier the lack of a roof or walls as of October 2003 will result in labor production losses in the winter of 2003. That the building shell activities are

universally near or in excess of five months behind their baseline date is where the project schedule is showing the impact.

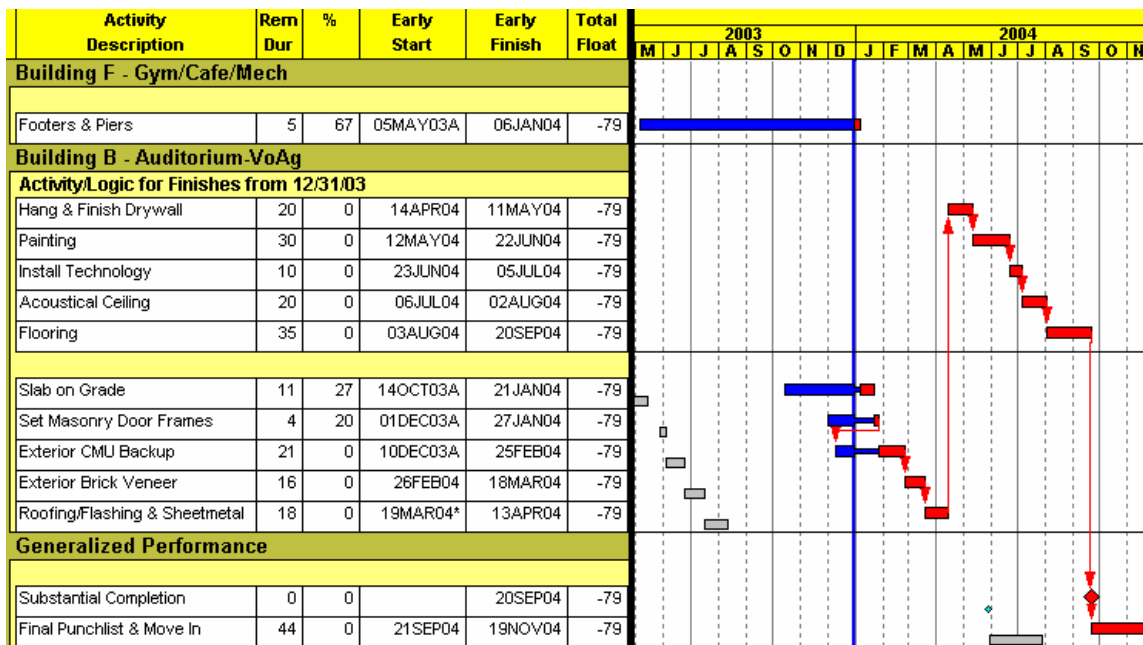


The prior illustration (Exhibit 8, PRX RL15) demonstrates the size of some of the delays incurred by McDaniel as the result of performance by others, in contrast to the November 18, 2002 initial schedule as of October of 2003.

Update Period # 6 - Status as of December 2003

In the two month performance duration between October and December of 2003 (PRX RL17 PDF Attachment 8) the project logic suffers forty work days, or approximately eight weeks, of critical slippage resulting in an impacted completion date of November 19th, 2004, seventy nine days negative float.

Possibly as important as the rapid increase in lost performance days is the fact that now the schedule has negative float in every building's logic. Of additional note is the lack of mechanical activities, as of December 2003, on the project's critical path heralding, again that McDaniel is not delaying the project critically:

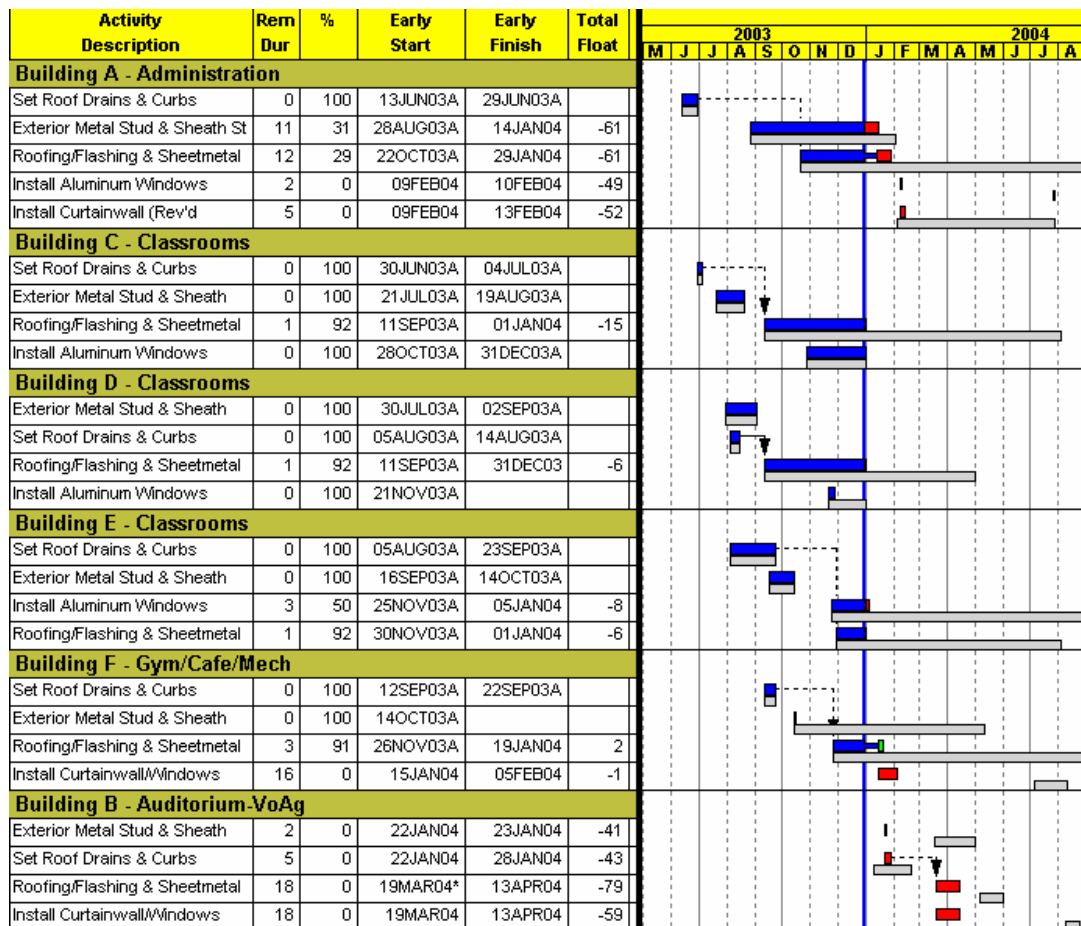


The next illustration from the RL17 schedule update deals with another difficulty facing McDaniel, as they forward interior rough activities in earnest.

One of the reasons McDaniel ultimately falls behind on the final stages of finish, is the lack of predecessor work that has been performed to afford him working conditions that can aid in completing the project.

Unrealistically optimistic schedule reporting as noted in the beginning of this supplemental report, and the unorthodox methods used by EDiS to update the schedule do not result in a properly computed CPM, and generally tends towards reflecting performance sequences that too aggressive given past durations for like work and production that is actually transpiring at the site.

The prior illustration depicts a number of enclosure activities that are schedule to have or had transpired. The lower gray bar shows when the work actually transpired.



In the case of roofing, windows and curtain wall scope the actual performance demonstrated by the gray lower bar appears to project performance dates literally months beyond the current monthly projection. Therefore this additional work performance time required is not referenced on the schedule.

The schedule, in reality, is further behind schedule than depicted because EDiS has not tied off the performance activities nor are they project revised, reasonable durations to complete. That many of these activities are showing one or two days to complete, or as being substantially complete, but have an actual performance bar that continues for months demonstrates how far behind schedule EDiS actually was as of this date.

A final note on how the schedule is computed and presented by EDiS: In their December 2003 Monthly Progress Report EDiS projects the completion for the project on September 8th 2004, some twelve weeks behind schedule per their calculation. EDiS in that January 19th, 2004 schedule, that is the basis for the projections in the December Monthly Report, erased the two month "Punch list and Move In" activity and thereby was able to achieve the September 8th, 2003 substantial completion date.

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Aside from EDiS unilateral reduction in McDaniel's performance time of approximately two months, the comparison of our schedule substantial completion (September 20th, 2004), and EDiS' overall completion (September 8th, 2004) is reassuring that they are no more than twelve days apart after more than a year of monitoring.

As to the unilateral revision to the baseline schedule logic, which removed the punch list and move in period, the loss of these two months of available performance time, if only for punch, test and balance, labeling, paperwork, startup is a significant compression of contract performance time on a project that is in negative float in every building.

Additionally the removal of this baseline schedule component now forces all interim construction to accelerate given EDiS failure to recognize delays, and timely issue commensurate extensions of time for schedule impacts.

As we progress further into a period of contract performance where delays will increase rapidly, one concern is any McDaniel contribution to project delay.

Specifically, as to McDaniel's responsibility for delay impacts, as of December 2003, I note that our project schedule update for that period (RL17) isolates critical mechanical impact in the A Building where the installation of ductwork and VAVs is forty one days behind schedule, but that is driven directly off a negative sixty one day delay to exterior framing and sheathing.

Otherwise, F Building, where Mechanical Rough and Mechanical Room Piping are both generating fourteen days of negative float, still sixty five days less than the project critical path, as referenced in the following illustration.

Activity ID	Activity Description	Rem Dur	%	Early Start	Early Finish	Total Float	2003		
							DEC	JAN	FEB
Building A - Administration									
106	Mechanical Rough	0	100	30JUN03A					
1-10-114	Install Ductwork & VAVs	2	91	04SEP03A	01JAN04	-41			
1-10-118	Test Ductwork & Piping	5	0	20JAN04	26JAN04	-8			
1-10-119	Ductwork Insulation	10	0	30JAN04	12FEB04	-11			
Building C - Classrooms									
141	Mechanical Rough	0	100	09JUL03A					
2-7-176	Install Ductwork & VAVs	2	90	15JUL03A	01JAN04	39			
2-7-181	Test Ductwork & Piping	0	100	24DEC03A	30DEC03A				
2-7-182	Ductwork Insulation	0	100	31DEC03A					
Building D - Classrooms									
173	Mechanical Rough	0	100	31JUL03A					
2-7-237	Install Ductwork & VAVs	2	90	09OCT03A	01JAN04	68			
2-7-242	Ductwork Insulation	0	100	26NOV03A	02FEB04A				
2-7-241	Test Ductwork & Piping	5	0	05JAN04	09JAN04	62			
Building E - Classrooms									
205	Mechanical Rough	0	100	31JUL03A					
12-31-364	Install Ductwork & VAVs (Tie	20	0	31DEC03	27JAN04	44			
12-31-367	Test Ductwork & Piping	10	0	02JAN04	15JAN04	52			
12-31-368	Ductwork Insulation	10	0	28JAN04	10FEB04	44			
Building F - Gym/Cafe/Mech									
236	Mechanical Rough	0	100	12SEP03A					
12-31-428	Mechanical Rough In	7	65	12SEP03A	08JAN04	-14			
240	Mechanical Room Piping	16	0	03FEB04	24FEB04	-14			
Building B - Auditorium-VoAg									
266	Mechanical Rough	3	90	07NOV03A	26JAN04	5			

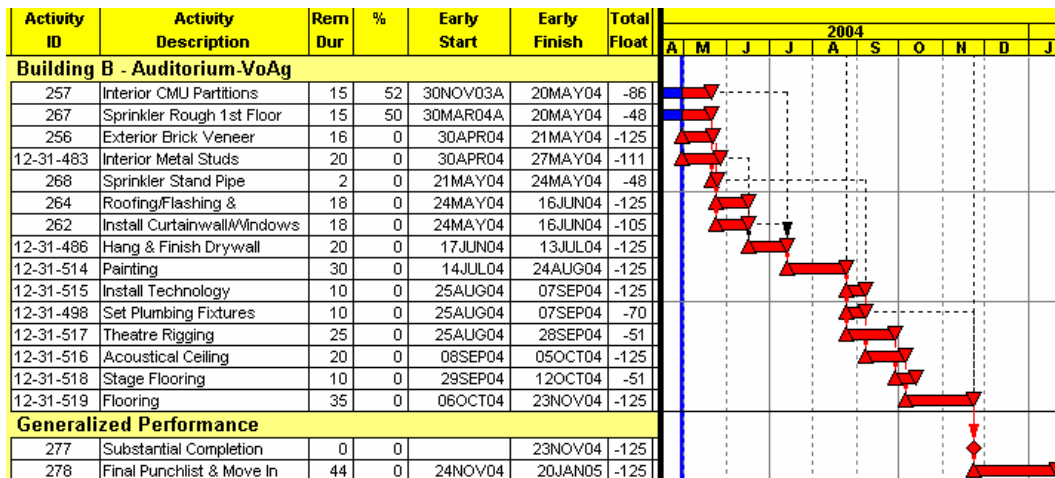
Update Period # 7 - Status as of April 2004

The review period ending April 2004 (RL19) is of significance in that at the culmination of this period RLI was notified of McDaniel's supposed performance issues.

I note that a review of the current progress critical path (RL19) does not offer any indication of mechanical activities, on any of the various critical path sequences that yield delay predicated on the RL19 use of the initial November 19th, 2002 schedule, and input of contemporary performance dates.

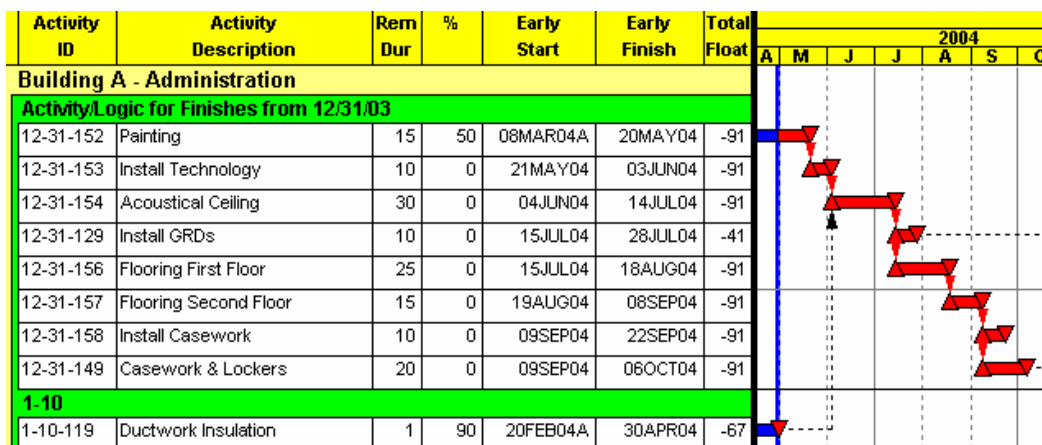
In fact, Roofing, Masonry, Framing, Drywall, Painting, Technology, Ceilings and Flooring, in Building B, solely occupy the most critical path using the same methodology and logic that I have brought forward from earlier in this report.

The following plate is a filter of those activities with larger negative float from the April progress schedule update (RL19)



This is not to suggest that there are not plumbing and mechanical activities on alternate, lesser negative float paths, such as the “Ductwork Insulation”, activity referenced in the following plate, being the most significant McDaniel issue in the April 2004 update schedule.

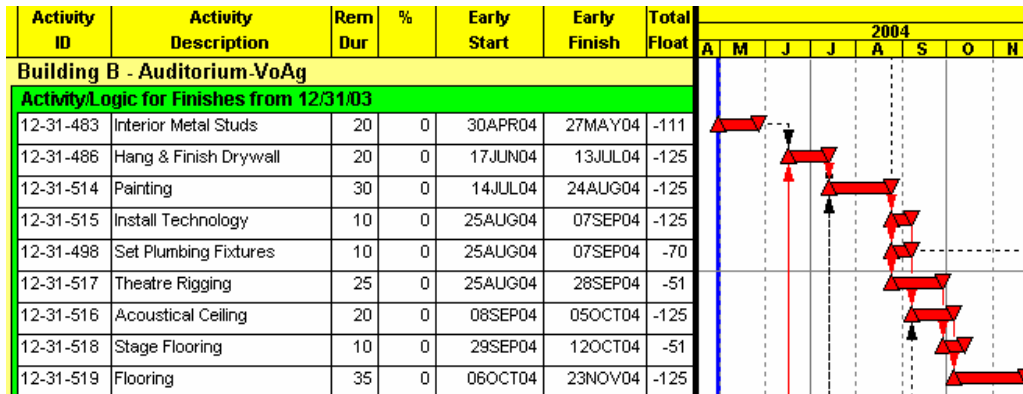
Though the insulation is pushing late some -67 work days it’s tally is substantively less than the critical -125 work day path for the project overall, and the -91 work day path that the insulation is ultimately tied into, but doesn’t drive.



Likewise, in the B Building, McDaniel’s placement of “Plumbing Fixtures” had a -70 work day negative critical path which appears to be largely eclipsed by an alternate non-mechanical path that is -55 work (-125 total, or near six months) days greater.

This logical sequence of larger negative float (-125 work days) is being driven by the lack of stud framing in the B building.

In each prior instance cited, as of April 2004, it would appear that McDaniel's remaining scope of work is not driving project performance and in fact the general project, and therein McDaniel access to Buildings A and D appear to have been hindered by delays in excess of five months in framing, drywall, acoustical ceilings and flooring as noted in EDiS's schedules.



Given that the other buildings which we did not reference in this month's outline (In that they did not contain negative float McDaniel components) specifically C, D, E and F are progressing towards completion as of April 30th, 2003 though McDaniel is repeatedly cited as being behind pace, so are several other contractors as noted in the EDiS progress meetings.

Update Period # 7 - Status as of July 2004

The project performance as of July 2004 is largely punch and closeout for buildings A, C, D, E and F, whereas the majority of Building B is still in the early stages of rough construction with ongoing installation of framing, drywall, window installation, and mechanical rough.

As noted in EDiS's monthly July 2003 report to the IRSD, piping and insulation is nearly complete in the Art, Music and JROTC rooms broken separate of the entire building logic to facilitate actual performance.

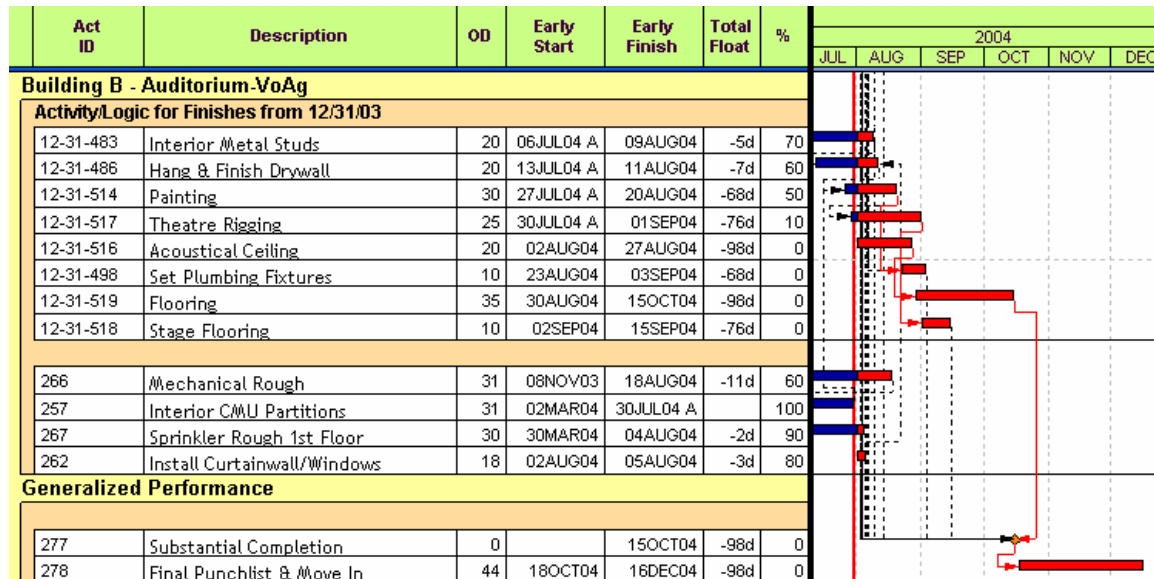
EDiS' July 2004 monthly progress report continues by stating that piping and insulation is nearing completion, that windows are nearing completion, that interior CMU partitions are complete.

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A review of the Look Ahead Schedule for September 1st through 7th, 2004 sets forth that the acoustical ceilings would not commence until September 2004, either in whole or part.

The following illustration references the status of B Building activities as of 7/31/04 and the impacted completion date for the project.



Though theatre rigging had commenced as of the July 2004 monthly progress meeting, the entire remaining rough and finish sequences in the ROTC, art and music rooms of B remain.

If the baseline schedule was adhered to, B Building, the critical component of this late schedule, would substantially complete on October 15th, 2004 and punch and testing of the overall contract would continue well beyond McDaniel's removal (Removed on October 11th, 2004) from the project.

From the prior illustration it would appear that the baseline schedule, including subsequent finish sequences would in fact extend the contract through December 16th, 2004.

During the months of September and October work continues to slow. Without funding McDaniel is unable to place sufficient resources on the project and work continues to slip until such time that the firm is removed.

In my opinion, it is apparent that the failure to complete critical predecessor activities in a timely fashion ultimately resulted in McDaniel's removal of from the project.

Summary

Time and again during the contract performance various parties failed to timely progress critical contract progress, to the detriment of the project overall, but were not policed or penalized by either EDiS or the IRSD.

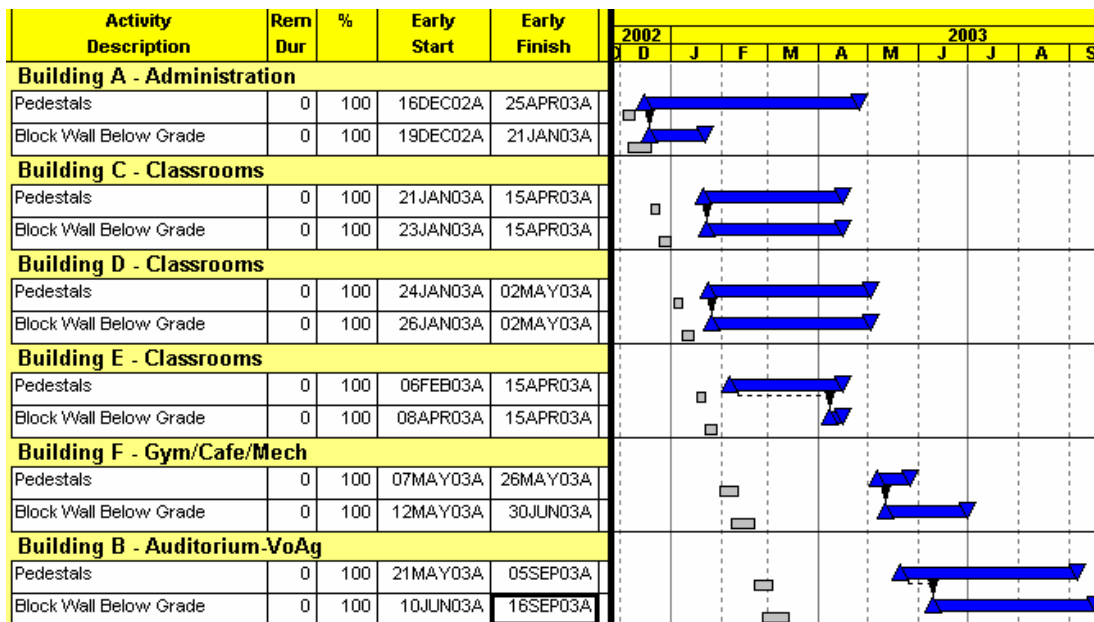
In my initial report I referenced events for correspondence or later EDiS schedule updates and cross referenced them to planned contract performance dates. In an effort to better afford a transparent viewing of the methodology used in outlining delays and impacts to the schedule I have attached schedule RL21, which sets forth my best understanding of actual performance dates in comparison to the November 19th 2002 schedule (Schedule attachment ED01).

I have used as the baseline for this comparison the schedule asserted by EDiS/IRSD to be the baseline, but continue to assert the right for McDaniel to rely upon performance dates established in their contract.

1. NDK's foundation and Enterprise's below grade wall placement

The fact that EDiS/IRSD had requested (though never received) a meeting with NDK's surety regarding performance and quality control issues sets forth the level of concern that was had with NDK's performance of foundation placement. This is a six month impact to project completion overall and a continual active interference with McDaniel's underground utility performance that resulted, per McDaniel in substantive labor overruns.

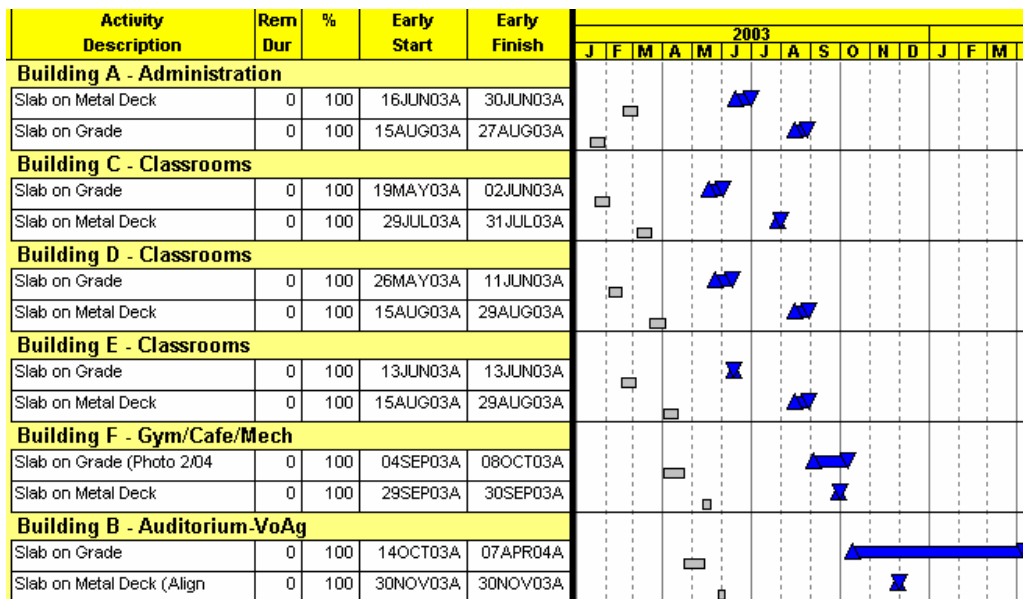
(The following plate compares actual performance (RL21) (Blue) to date and durations afforded from the November 19th, 2002 logic (ED01) (Gray) :



2. NDK Placement of Slabs on Grade & Deck

(Same data source as prior plate)

Extensive delay to the placement of slabs on grade and deck, and to the penthouse levels waylaid McDaniel's performance of overhead piping and ductwork. With a delay range to start of three to ten months and the fact that little interior rough, other than hangars and limited piping can progress prior to placement, these delays obviously had an incontrovertible impact on McDaniel's performance.

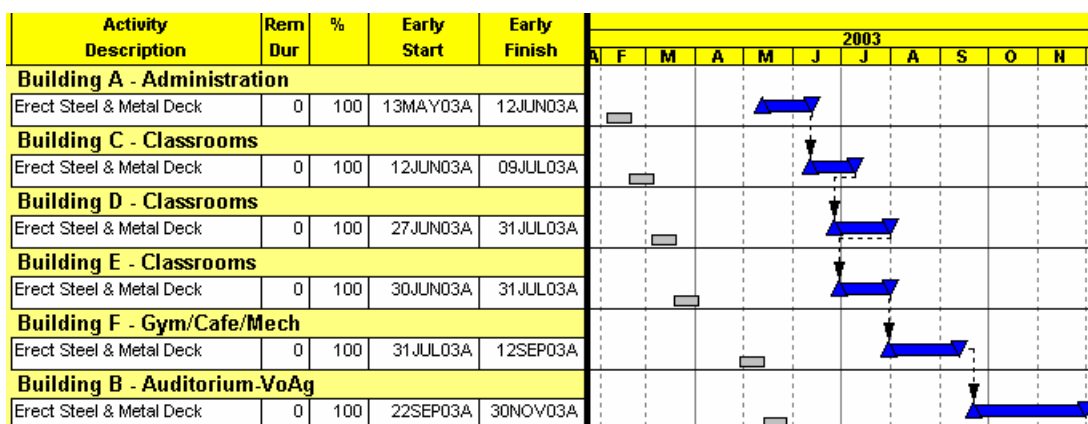


3. Murphy Steel's Commencement & Extended Erection Delays

(Same data source as prior plate)

Note that the steel initially commenced three months later than the dates planned and required three additional months to complete.

Though various parties have argued that the project schedule's critical path will travel through each of the buildings separately there is no basis to suggest that the B building steel, the last erection for the final building was not on that building's critical path. Given the information regarding critical paths from the most recent meetings, including the January 2004 EDiS progress schedule update, B building in its entirety, due to prior delays, was on the project's critical path. This is a six month impact to contract completion, and the delays in steel placement impacted:



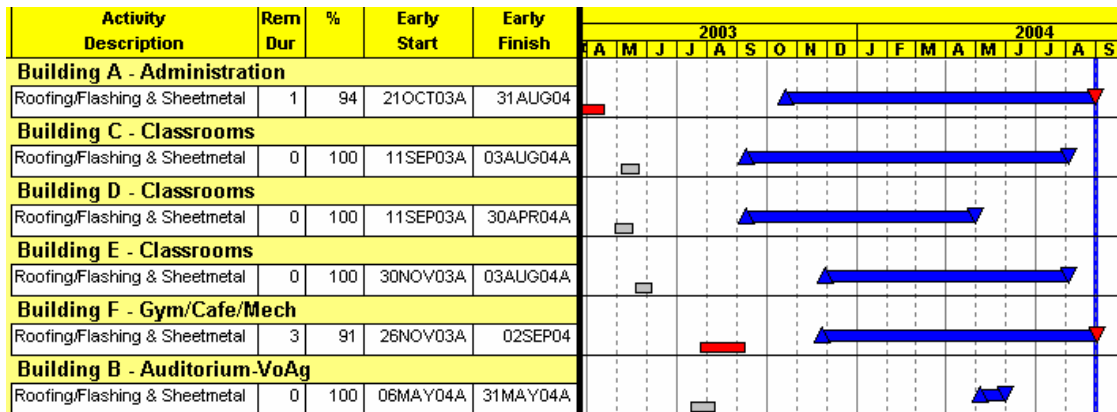
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4. CTA Roofing's delay to roofing commencement through weather tight.

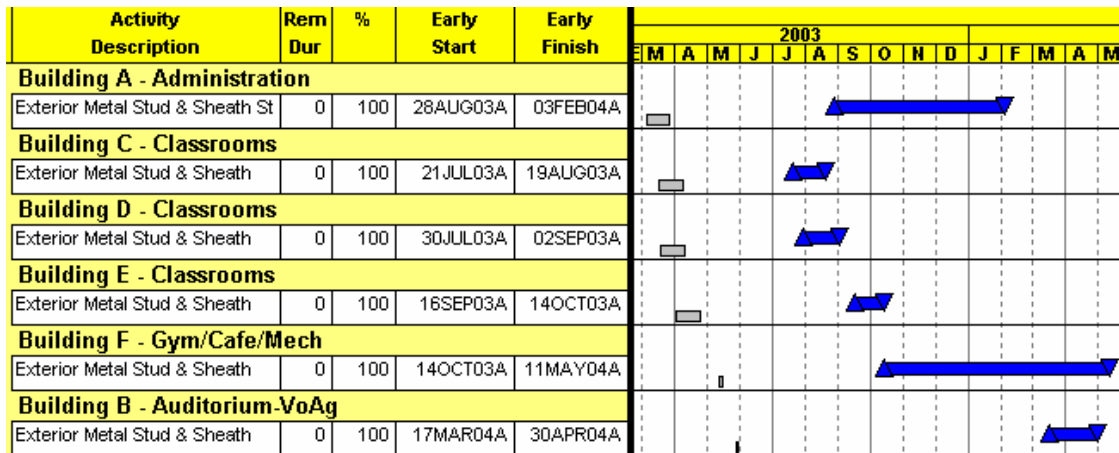
The slow roofing pace that, cited as recently as the July 2004 schedule update review, in this report resulted in roof placement, flashing & roof capping being cited as incomplete in various buildings and a continuing source of damage to interior finishes. Throughout the project roofing has, and continues to be an impediment to, among other issues, sheet metal placement, insulation of piping and ductwork, and finish trade progress/closeout of the remaining areas.

Possibly the most accurate reflection on the roofing effort was that after the belated completion of the steel erection it took between three and seven months, depending on the building, for roofing to actually start. This consumption of literally months of critical performance time, masked by the distribution of revised schedule logic, robbed subsequent contractors of their contractually promised performance durations:



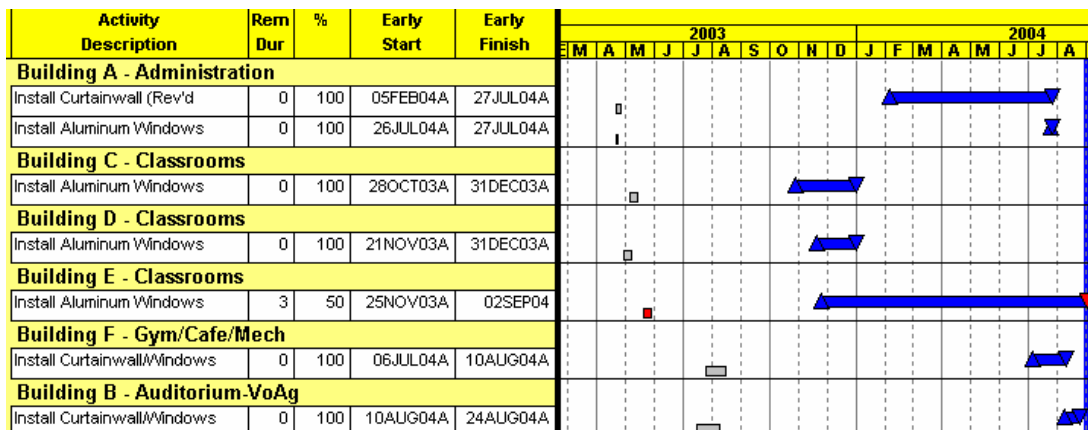
5. NDK's delay in completing exterior framing and sheathing -

Again one has to question how this performance was allowed given the correlation between exterior enclosure and the commencement of weather sensitive rough and finishes:



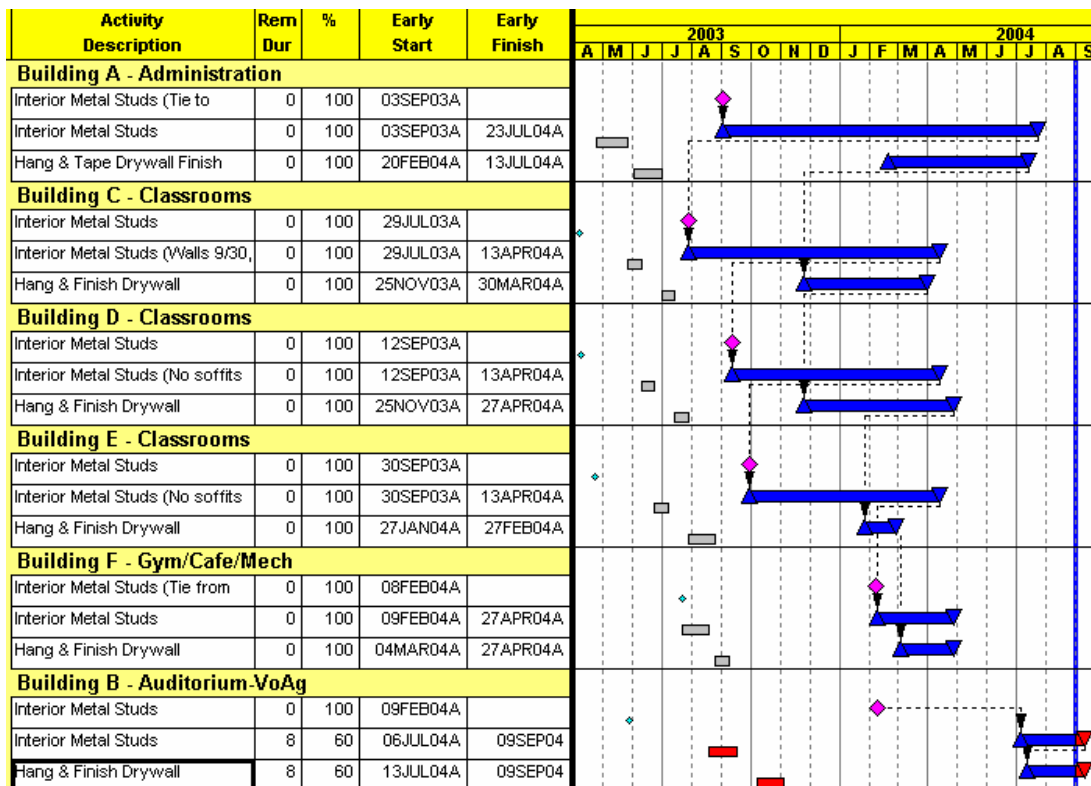
6. Service Glass' Delay to Start and Completion of Window and Curtain wall installation

The failure to timely complete exterior glass and glazing was a direct delay to NDK's interior drywall, as cited by NDK on a number of occasions, but especially in completion of Building A.



7. NDK's delay to interior metal framing and Drywall hang, tape and finish

Though much of the delay in commencement of framing can be attributed to delay in placement of slabs on grade and deck, the sheer time required to complete framing and hang, tape and finish of the wall board exponentially exceeds the baseline schedule allotment (Schedules RL21 (As Built dates as of August 2004 Vs ED01 November 12th, 2002 schedule):



PCM has attached the backup files for each schedule we used in comparison plus PDF files of same for review and support of the conclusions set forth in this report.

The simple fact that the management team was unwilling to implement an equitable adjustment to the contract to afford more time, that ultimately would alienate the owner, but relieve much of the impact incurred by McDaniel demonstrates the mindset that resulted in this termination.

CONCLUSION

In summary had EDiS been willing to:

- equitably extend the contract for impacts in excess of five months
- mandated performance to baseline milestone constraints for
 - site work foundations
 - steel erection
 - slab placement
 - roofing
 - masonry
- fend off other contractors working out of sequence (Early masonry, Early finishes)

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- afforded an enclosed working area (2nd winter in unanticipated open buildings.
- helped avert building progress as much as twelve months late prior to McDaniel involvement

McDaniel might have averted the termination, and the building would have been competed in early 2005, possibly late 2004, including any needed repairs or supplementary contract documentation if EDiS had simply recognized the delays referenced throughout the project issued timely extensions and helped mitigate labor losses by controlling progress sequences.

What EDiS in fact did was ignore the delay impacts, not police delinquent performance by others, constructively accelerate/compress follow up mechanical sequences requiring work in adverse conditions, and then terminate a contractor, McDaniel, who had been burdened with the majority of the aforementioned impacts.

Clearly, the termination of McDaniel by EDiS in October 2004 had an impact upon RLI, as at the time of termination, McDaniel was significantly behind schedule, yet it is my understanding based upon a review of the documents that McDaniel was paid by IRSD through the recommendations of EDiS and BMG based upon the certified pay applications that McDaniel was on schedule and that work had been completed. Based upon the aforesaid analysis of the construction project schedule, at no time was McDaniel on schedule and, in fact, they fell further and further behind as the project progressed.

The fact that McDaniel was paid for work which it had not completed, despite certifications that the work had been performed, provided McDaniel with advanced payments and significantly depleted the contract balances to the detriment of RLI. Given that EDiS failed to extend any of McDaniel's schedules, it was highly inappropriate for EDiS and BMG to certify as complete work McDaniel had not performed, regardless of the cause of the delay. Since EDiS and BMG were the providers of this information to IRSD, which IRSD relied upon in making the payments which depleted the contract balances, their conduct caused harm to RLI.

Electronically signed,

Damian Cassin

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